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IN BLOOD and INK

The Life and Documents of American Democracy

Book I: Runnymede to Roosevelt

BY

MAURY MAVERICK

Book II: Documents Tell the Tale

Democracy, to me is liberty **plus** economic security. To put it in plain language, we Americans want to talk, pray think as we please—and eat regular. I say this because there is a lot of nonsense in talk about liberty. You cannot fill the baby s bottle with liberty.

Maury Maverick

A NEW MODERN AGE BOOK

PUBLISHERS' NOTE:

It is unusual to allow an author to write his own blurb but in this case we feel that we cannot improve on the one below written by Maury Maverick.

ADVERTISEMENT

A GROCERY MAN'S CONSTITUTION

In some old English books, through whose must and dust I have plowed in writing this book, I have seen at the beginning of many a one an ADVERTISEMENT. This was a sort of opening statement by the publisher, telling what a fine, upstanding, scholarly gentleman was the author (who was both learned and gallant), and how fortunate was the reader to have the opportunity of reading the book at so low a price.

One Advertisement went so far as to say that it would be well for the sons of worthy tradesmen to spend their money thus wisely; that the price was so low that a green grocer's clerk could easily afford it.

But we shall be very serious, and the name of the book shall be *In Blood and Ink,* though it might well be *Our Constitution and What Is In It,* for, as we shall come to see, there is far more than ink and paper to our Constitution,—there is blood in it. Blood has been spilled in achieving and in maintaining it. And from this blood, and from the lives of the millions of Americans who have lived and who live under it today, comes its own life and pulse and spirit. So this book might also have been called *Humanizing the Constitution* or *The Spirit of the American Way,* for, bless me, this is no technical "lawbook." Perhaps best of all I should simply have dubbed it *The Grocery Man's Constitution,* since its price is about that of a good beefsteak, an expensive two dozen eggs, or, say, three gallons of Andy Mellon's or John D's gas.

In truth and fact, *groceries* are at the bottom of every constitution, and they come from the land. If you don't eat, and in comparative peace and freedom, you have no constitution.

This book is written not for New or Old Dealers, but for everyone who lives under the sun of our country, and wants a *living* American Constitution. I have my opinions, of course, and will express them. But we Americans are getting too namby-pamby; we are afraid to look at the other fellow's point of view, so we all sit down and blink through the kind of propaganda that warms the cockles of our irritated and partisan hearts.

If one does not approve of the President, one reads a Hate-Roosevelt book, and moons over the Old American Spirit which, alas, is no more. If he is a New Dealer, he reads a New Deal book, and moons over the Progressive Spirit which he hopes is still alive. In other words, people usually get a book with which they agree in advance.

But aside from our views and prejudices, what do we all want in society?

For my part, I want the businessman to make a fair return on his money, the farmer to have good crops and sell them at a profit, and the worker to get good wages.

You say: What has that got to do with the Constitution, or the Law of the Land? The answer is, *everything.* For turned into constitutional language, it is *life, liberty,* and *property.* And no matter who we are, if we are reasonably good Americans, we want a *fair* Constitution, and a government on which We the People, can depend.

Indeed, this *is* the grocery man's constitution, the property owner's, the worker's, the taxi-truck-mule driver's, the college youngster's, the doctor's, the strap-hanger's, the clergyman's, the farmer's—and even the economic royalist's.

Constitutions develop and become living forces under which people may live together in peace. And that is why I hope not only Progressives, Democrats, and the like will read this, but

likewise the most conservative Republicans, whose backs are swayed with worry, worry. For we are all Americans—and human.

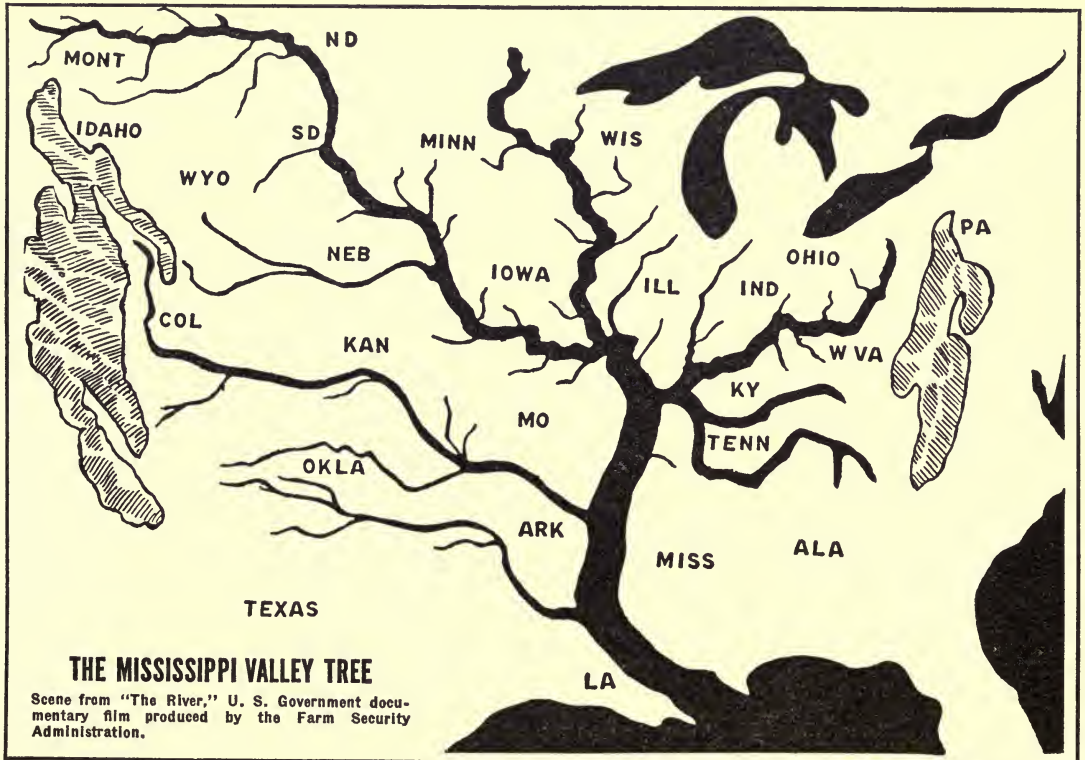
We shall have two books: The First, a story of the living constitution; and The Second, a collection of the principal constitutional documents of our history.

In the narrative it will be impossible for me to keep from expressing my opinions. But in describing a document or an event, I will stick to facts. In any event, the Constitution compels no one to agree with me, and if I become tiresome, or if you don't like what few opinions I shall express, you can turn to The Second Book and read our great constitutional documents. There you can get your money's worth, and form your *own* opinions.

And you will find that constitutions have blood in them. They are born in suffering and hardship. But likewise you should know that constitutions must continue to pulse with blood, and must have in them living force.

Though I personally dislike in other writers this curvetting, and stalling and prancing, I am adding a Foreword, which is an Author's Prerogative, much like a King's Prerogative, and you will read it if you only go far enough. So before the horse gallops off, let us read the Foreword, and then we will really ride through times thrilling and brave and full of knowledge.

MAURY MAVERICK



THE MISSISSIPPI VALLEY TREE

Scene from "The River," U. S. Government documentary film produced by the Farm Security Administration.

IN BLOOD AND INK

Maury Maverick

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Book II—Documents Tell the Tale

Book I

FROM RUNNYMEDE TO ROOSEVELT

FOREWORD

CONSTITUTION, DEAD OR ALIVE?

With liberty dead in over half the world, and gasping everywhere else, it is time for all Americans to spend a little while finding out just what our rights are—and to be willing to spend a little more time protecting them. Conditions in Germany with its cruelty and persecution are shocking, but so are conditions in many other places—and we are far from perfection.

In our country it is especially important now to inquire into our Constitution, above all, our Bill of Rights. We came to a virgin continent and have made money so fast, though we have wasted and squandered our resources, that we have forgotten our constitutional heritage.

We have left our liberties mainly to judges and lawyers.

That is the reason I have placed in The Second Book our principal constitutional documents. Any American can read them as well as any judge.

This is the first time the documents that are a part of our constitutional stream have been brought together for the ordinary reader. There are, of course, many scholarly collections of these documents, but here are collected from many sources, the documents needed to understand our constitutional background.

It has been a pleasant job for me, these last few years. As a Member of Congress, I have had access to the best sources of information and have talked to our finest authorities. But besides availing myself of scholarship and learning, I have been pretty nearly all over the country; in slums and penthouses, in small shops and great factories, in cities and on farms—with PEOPLE everywhere. Letters by the thousand I have received from individuals who tell me what they think about the Constitution.

These people who write and talk about the Constitution have as much right to their opinions in all matters of opinion as the lawyers and judges who are supposed to be experts. They do not want the Constitution to become loose, dry bones tied up in the judges' sack.

I hope that America's renewed interest in constitutionalism will not fall into a vulgar Battle of Symbols as did the Supreme Court fight of 1937, in which neither side was right. For as a whole, American "Constitutional Law" has purposely been made technical and obscure. Our people have been tricked by symbols, magic words, strange taboos. Many are the tricks played on the American people to make them stand for practices which are unfair indeed.

Some of the documents here included are almost wholly unknown to the public at large. Some of them are not taught, or even mentioned, to many of our college students. For instance, the Declaration of American Rights (page 39, Chapter 11), adopted October 14, 1774—nearly two years *before* the Declaration of Independence, is of utmost importance in our constitutional history, and is good, dramatic reading. Included, also, is the "Declaration of the Causes and Necessity of Taking Up Arms" of the United Colonies of North America (page 49, Chapter 13), July 6, 1775. It reads like the King James Version of the Bible and the wailings of Job—but of a Job who is not going to lie down in any ashes.

And here are the Resolution of Independence, *not* the Declaration, but *the official act of Independence;* the Declaration itself; the Articles of Confederation; the Constitution; and the very important Confederate Constitution. These mean so much to every American that he should read all of them.

The principal thing is for all Americans to find a way to hang on to what our forefathers called *liberty.* Conservative or radical, you have the right to any opinion you like—that's inherent in Americanism. Free opinion is one of the blessings of our Constitution.

It is this free opinion that I hope and *you* hope will be preserved. If we are sensible Americans, we must agree upon our right to disagree. We must, too, open our eyes to history in order that we may see the future and prepare for it.

Take out your pencil, if you don't mind. Make notes as you read. Drop me a line; criticize violently if you please; tell me whether I am right or wrong. Then put the book away, and ten years from now let's look at our work again, and see if our viewpoint has changed, or if the world has changed.

But let's get started.

MAURY MAVERICK
San Antonio, Texas

1

"WE THE PEOPLE . . ."

"THE GENERAL WELFARE . . . BLESSINGS OF LIBERTY TO OURSELVES AND OUR POSTERITY"

PEOPLE.

We are the people—a part of the *living constitution.* When the people took the trouble to write what they called "The Constitution," they spoke of the "Blessings of Liberty to ourselves and our Posterity." We and our children, that is, are to be eternally free.

The preamble to the Constitution drafted at Philadelphia in 1787 said:

> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

This meant, of course, that the people intended to: (1) Make for themselves one single union, or country; (2) Establish local order and keep out invading armies; (3) Establish government for the general welfare of all citizens; (4) See that all persons had what was generally known as "Liberty," or freedom.

This meant freedom in mind and body, self-respect, dignity. To which we must add the right to work, to eat, to have a roof over our heads, and to send our children to school.

Indeed it is of people, human beings, that we must think as we review the struggles and sacrifices connected with the mak-

ing of our American Constitution. People, low and high. People, poor and rich. And quite important is it to note that the Constitution adopted at Philadelphia did not merely form a confederation of states, but created an agreement *for union of the people.* And the people were no mere abstractions living in a void. Like all real people, they lived on the land. People and Land. Land and People. A living constitution must provide for both.

2

PATRICK HENRY SAID: "————"

"Law of the Land"

Land.

People, we see, were emphasized in the very beginning of the Constitution. Toward the end, our forefathers spoke of this Constitution as being the supreme Law of the *Land.*

They might have said "supreme Law of the Nation." But they chose the word *Land,* instead. Whether there is any significance or not, land is an integral part of the Constitution.

Later, in another chapter, we will spend more time inquiring into the actual land of this continent. Although we already know it, let us bear in mind as we go along, that from the land we get the shoes on our feet, our clothing, the electric light by which you are probably reading this book, the roof over our heads, the elevator, the paved street, oil, metals, foods, medicines.

Indeed everything we know, including the paper upon which was written the Constitution, comes from and is built upon land.

Do not think of land, then, as merely an interesting word for city dwellers and armchair philosophers to muse upon. Think of land as *land*—a physical reality.

And there is a law of this real land—not a lawyer's law, but a natural law never modified in the slightest by artificial national or state boundaries. Stated quite simply, it is: Ownership of the land, or property rights in it, is the basis of all liberties. Land is wealth; wealth is power; power is liberty. In the last analysis, the liberty of a people (or an individual) depends upon the quantity and quality of the land they possess.

Possibly Patrick Henry did say something about liberty and death (some scholars say it is very doubtful), but it is certain

he *did* say, "He is the greatest patriot who stops the most gullies." Patrick Henry knew that the greatest patriot is the one who does the best job of conserving the land. It was, perhaps, the most sensible thing Henry ever said. The reason he said it was because colonists ruined their farms by wasteful methods, and he foresaw that if the practice was continued, there would be nothing to eat and wear. He realized, too, that with independence, his fellow Americans were continuing their wasteful practices.

In thinking of our Constitution, our *living* constitution, we should understand our absolute dependence upon the land. The actualities of Life and Land cannot be divorced from our Constitution.

Anyhow, we might as well know that while we argue and quibble over legalistic phraseology, and throw trick words and empty symbols at each other, our land is washing away. Trickling slowly, then running faster, then faster and faster, then gushing and roaring and storming and flooding, water is carrying our land down to the sea.

The mighty United States of America. Let us rise high in a great steel bird, a twenty-one-passenger, streamlined plane (itself made out of the land), and look down upon our continent.

3

WATER STEALS, AND CARRIES TO THE SEA

The Law of the Waters

We rise high in this great and glittering steel bird to take a glimpse of our continent with its real earth and trees and waters.

For what we really want to know is how our government is running, and how the water is running on our land. As the water runs, so runs our government. If water is let loose by our artificial civilization to run as it pleases, it becomes a thief, and carries our wealth—and liberty—off to sea, never to return it.

We want to know what we are getting out of this earth. More, we want to know if we are getting our share of the land, and whether someone else is getting too much. We want a stake in the land, in one form or another—be it job, stocks and bonds, check-book, machinery control, or farm; we want it for our children, too. And we don't want it plundered or wasted by man, machine-devil or corporation.

But look! Look!

What we see is the great continent of the United States of America. As we rise higher and our horizon broadens, we can forget for a moment our local and little interests. Let's take a look at our map.

The thing that looks like a tree is the Mississippi Valley, with rivers rolling on down to the Gulf. Try to comprehend what it means, and then look at an ordinary map of the United States.

On it you will see the artificial lines of the states. All the rivers you see over the continent run across these artificial state lines, across counties, cities, townships, across all of our

artificial boundaries, without asking permission of the Supreme Court, the Constitution, the American people, or of any of all the judges, sheriffs, and cops in the country. Not one or all of these can stop even one little drop with writs or commands or guns.

Take a look at one of the newer western states, Colorado—just four straight lines, and many of the others, merely mapped out by surveyors according to instructions from men in Washington who had never seen the land. *Because* these lines were drawn, do drainage courses change? Do rivers, creeks, forests, minerals, or anything that God put upon the land? Certainly not.

That is why we need one supreme law of the land, a law for a continent, for the people and the earth and the waters. For if these elements are wasted and thrown away, if water and dust storms are allowed to wash and blow at will because of some foolish or selfish idea about those artificial state lines, we shall have no country at all.

Therefore, let us all understand, wherever we live, that this is *our* country, "one and indivisible"—that earth cannot be kept in place by the imposition of artificial lines, by legalistic phrases, black robes and solemn faces. For the water keeps running along, and as it runs, it washes our land *and our living* away.

But just what is a constitution?

4

BODILY AND EXTERNAL GOODS

Definition of Constitution

To define the word *constitution* is a hard job. It becomes even harder when millions of people have preconceived ideas of the word, and, with some symbol or other in their minds, flare up in anger when they hear of a concept that differs from their own, or a fact of history that topples over some cherished myth. Yet if we are to discuss our Constitution—the American Constitution—it is well to have a fair understanding of the word, an acceptable all-round definition, in order that we may know what we are considering.

The word *constitution* seems to mean, generally, how any given thing is constituted or set up. It means the set-up or *frame* of your government, your club, your business, the make-up of your body, and what not.

For instance, in our set-up, or frame, or constitution, we are prohibited from having a king, passing *ex post facto* laws, establishing a nobility and the like. We know, without any judge declaring it, that for the Congress to attempt anything specifically prohibited is against the set-up, is against the Constitution, is *unconstitutional.* In these plain matters, the national Congress would certainly need no court to tell it that such acts would be null and void. All citizens know that violations of specific provisions of the written Constitution are unconstitutional.

But before we start talking about what is *un*constitutional, let us get back to finding out what a constitution is. The *Political Dictionary,* London, 1845, says as follows:

> CONSTITUTION, a term often used by persons at the present day without any precise notion of what it means. Such a

> definition of a Constitution, if it were offered as one, might be defended as equally good with many other definitions or descriptions which are involved in the terms used whenever a constitution is spoken of.
>
> The constitutions which are most frequently mentioned are the English Constitution, the constitutions of the several States composing the North American union, the Federal constitution, by which these same States are bound together, and various constitutions of the European continent.

This dictionary proceeds for several pages to define the various constitutions enumerated, and ends up by proving what it said in the first place—the term is vague; it lacks precision.

Benjamin Franklin and other eighteenth-century American writers used the words *constitution* and *government* interchangeably and synonymously. But they always implied that there was something else besides a *written* constitution—a spirit of constitution which came from the people's way of life.

Many centuries ago, Aristotle said: "The Constitution is the State"; and Isocrates said: "The Constitution is the *soul* of the State." The constitutionalism of our forefathers was nothing new.

The difference between a written constitution and one that is unwritten, is difficult to explain. We are accustomed to say that the English Constitution is unwritten, and that ours is written; but that is not strictly true of either. Alexander Hamilton recognized that ours is not wholly written. When he was trying to explain why the new Constitution had no Bill of Rights (*Federalist,* 84), he frankly assured the American people that they did not need a Bill of Rights. He argued that since "they [the people] retain everything [meaning, of course, the inherited and ever-living constitution, whether written or not, now by Revolution separately possessed by the American people], they have no need of particular reservations." He maintained that the words of the preamble, in establishing liberty and union, were a better recognition of popular rights than many state constitutions which were more like lectures on ethics than a "constitution of government."

Surely, then, there is vastly more to our Constitution than what was written on parchment at Philadelphia in 1787. Here is a Founding Father saying so, and it would be true whether he had said it or not.

Whatever our conception of the Constitution, it is extremely important that we do not make too much of a sacred cow of it. For if we do, it will be impossible for us ever to solve, or even start to solve, any serious problem involving government action. It is essential that we take a calm view of it, and divest it of the smoke screen of buncombe and solemn nonsense that often surrounds it.

The *Century Dictionary* of 1889 gives a general and sensible definition of the word:

> 1. The Act of constituting, establishing or appointing; formation.
> 2. The state of being constituted, composed, made up, or established; the assemblage and union of the essential elements and characteristic parts of a system or body, especially the human organism; the composition, make-up, or natural condition of anything: as the physical *constitution* of the sun, the *constitution* of a sanitary system, a weak or irritable *constitution.*

It proceeds to define a constitution as a system of fundamental principles, maxims, laws or rules embodied "in written documents or prescriptive usage" for government. The dictionary provides in addition definitions of the hundreds of different kinds of constitutions: business, governmental, social, and ecclesiastical. It says, for instance, the New Testament is the "moral *constitution* of modern society."

The actual word, of course, occurs in the very early Roman writings on government. Preceding these were various Greek constitutions, *politeias,* on which Aristotle and others wrote extensively and well. There are evidences of *constitutions* in various cultures and civilizations for thousands of years before that.

Early in American history the word *constitution* began to be used not merely with reference to the English Constitution, but

also with reference to colonial governments. Dated July 21, 1621, we find "An Ordinance and Constitution of the treasurer, Council and Company in England, for the Council of State and General Assembly" for the Colony of Virginia. The word was used after that in various ways, as the idea of what it implied developed.

At the outset the idea was limited to a constitution for each colony in addition to the British Constitution, which belonged to all of the people. But very early in the history of the colonies there developed, vaguely at first, the idea of an *American* constitution which would apply to all Americans living on this continent.

After the adoption of the first written Constitution, which was known as the Articles of Confederation, the new states began to call the outgrowth of their royal charters "Constitutions." However, feeling that an explanation was necessary, they generally added "Or form of government."

We have, then, a fair idea of what *constitution* means. Or, at least, we know something of the various conceptions. The word is today rich in meaning and historical association. Before we finish this book, we will have become aware of the blood and struggle and spirit that have gone into the making of our charters and constitutions.

But think and read as we may, cram and choke ourselves with left-over wisdom as we will, Aristotle's words cannot be improved upon: "The aim of the constitution is the realization of the most desirable life, the life which is lived in accordance with virtue—virtue not of one kind only, but of all,—*and with a full equipment of bodily and external goods.*"

5

LAWYER-WORDS IN CLOUDS OF DARKNESS

The British and American Constitutions

I have been trying, you see, to emphasize that the relationship of people to land and water is the basis of any people's living constitution—not lawyer-words rolling high in the clouds of legal darkness. And I have tried to define the word *constitution,* bearing in mind the various meanings given to it in previous centuries.

Since our Constitution grew out of the British system (which, substantially, was ours as well, until the Declaration of Independence in 1776), I think it would be helpful for us to have brief outlines of the British and American constitutions. It is true that we cannot outline what is in the hearts of the people even if we are doctors or psychoanalysts. But by examining lists, events, dates, and great documents, we can more easily understand the development of American society and thought.

So I present two outlines: one of the British constitution to 1776, and one of our own constitution to date. Read them, and get them in mind. Then we can begin with the Magna Carta and go on through with the story.

6

THE BARONS OF RUNNYMEDE AND THE GREAT CHARTER

OUTLINE OF BRITISH CONSTITUTION

MAGNA CARTA, 1215

Barons of England force the Great Charter upon King John at Runnymede. Although a reactionary document, it has fired the imagination of people ever since, and forms the documentary basis of English and American constitutional liberty.

RE-ISSUES AND RE-AFFIRMATIONS OF MAGNA CARTA BY SUCCEEDING KINGS

The Petition of Right, 1628.
The BILL OF RIGHTS, 1689.
Statutes of Parliament, to date.

JUDICIAL DECISIONS

Interpreted the charters and statutes. In the years after Magna Carta, English Courts, reflecting public opinion, expanded it.

THE COMMON LAW

Legal traditions and customs built up through the centuries of English and American history.

THE CUSTOMS OF THE CONSTITUTION

Political customs and usages are as much a part of the constitution as the written provisions. "Customs" consist of duties

and habits not required by any law—such as cabinet responsibility, the King keeping his Royal Mouth shut on political matters, and others.

These elements, plus many other charters and laws, are the framework of

THE ENGLISH CONSTITUTION

Until 1776 American and English fused.

7

"ALL MEN ARE CREATED FREE AND EQUAL"

Outline of American Constitution

BASIS

THE BRITISH CONSTITUTION

Colonial Charters

Sometimes called "constitutions." Under the influence of American customs and usages, tended to develop idea of liberty being vested in the people themselves.

Declaration of American Rights
October 14, 1774

Proclaimed constitutional rights of Americans as Englishmen, and denounced unconstitutional practices of English Government. American Constitution thereby began to take form.

Declaration of the Causes and Necessity of Taking Up Arms
July 6, 1775

Blood is drawn for the American Constitution.

Resolution of Independence
July 2, 1776

The Official Act of Independence.

DECLARATION OF INDEPENDENCE
July 4, 1776 (Signed August 2, and after)

The Announcement, or advertisement to a "Candid World."
Denounced violations of (English) constitution.
Established three points:

1. Political separation. "United States of America" used officially for the first time.
2. Abolition of all noble ranks and titles—"all men are created equal." Set up democracy.
3. Merger of fundamental liberties of English constitution into American constitutional stream.

AMERICAN CONSTITUTION TAKING MORE DEFINITE FORM

Articles of Confederation and *Perpetual Union,* March 1, 1781, our first written constitution for the union. Known as the "Foederal Constitution."

1. Definitely represented a forming nation. Congress received and sent ministers, executed treaties.
2. Merged inherited liberties into American Constitution, which were additional to this *first written constitution,* or form of government for the union.
3. Established right of travel anywhere in new nation.

The Constitution
Written and Signed at
Philadelphia
1787
(Became operative Mar. 4, 1789)

Convention had been called to *amend* for "Commercial Purposes" the Articles of Confederation, the "Foederal Constitution."

Preamble of the new Constitution contained a declaration of intent to secure Liberty and to promote the General Welfare (showing purpose).

Habeas Corpus (Have the body, or freedom from

being kept in jail arbitrarily without a chance to be heard in court).

But

NO BILL OF RIGHTS

Such omission, however, did not wipe out Inherited and Inalienable Rights of the Centuries.

BILL OF RIGHTS, ADOPTED 1791

First Ten Amendments to the Constitution

Asserted and guaranteed liberties, such as freedom of speech, press, religion, and assembly; *but did not rescind inherited liberties already in effect.*

Note: It must be understood that the Bill of Rights did not protect as against invasion by states and their subdivisions, and does not now.

AMENDMENTS

XI Amendment, 1795

States Not to be Sued.

XII Amendment, 1804

Reform Electoral Vote.

TERRITORIAL EXPANSION

Louisiana Purchase, "unconstitutional," becomes constitutional by occupation of land. Florida. Mexican War; Texas and West. Oregon settlement with England.

CIVIL WAR COMES

CONSTITUTION CRACKS

LINCOLN'S EMANCIPATION PROCLAMATION

In effect January 1, 1863. Slaves not freed by Proclamation, but principle established.

XIII AMENDMENT, 1865

Slavery abolished. Popular principle of Emancipation Proclamation confirmed. (Georgia 27th state to ratify. Federal troops used to force adoption.)

XIV AMENDMENT, 1868

Rights of persons to *due process of law.* Interpreted by Supreme Court to apply to corporations.*

XV AMENDMENT, 1870

No denial of the right to vote on account of "race, color, or previous condition of servitude."

XVI AMENDMENT, 1913

Income Tax.

XVII AMENDMENT, 1913

Popular Election of Senators.

XVIII AMENDMENT, 1919

Prohibition.

XIX AMENDMENT, 1920

Woman Suffrage.

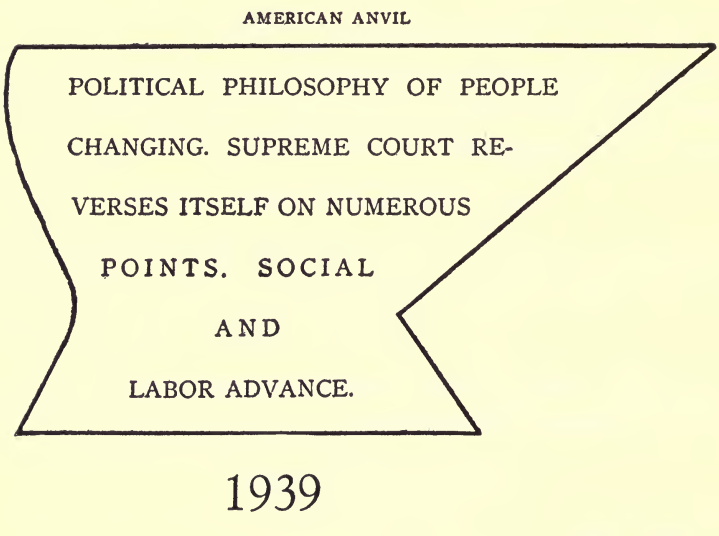
*For a full discussion of the changing interpretation of this important amendment, see Chapter 25.

XX AMENDMENT, 1933

Lame Duck.

XXI AMENDMENT, 1933

Prohibition Repeal.



The Anvil of Public Opinion.

With these outlines in mind, let us get back to the beginning of our Constitution, across the seas in England.

8

KING JOHN AND THE TREE OF LIBERTY

Magna Carta, 1215, at Runnymede

Magna Carta, extorted by the barons and high clergy of England from King John in 1215 at Runnymede, is often cited as the beginning of the English constitution; it is therefore also the beginning of American constitutional history. Of course, no one knows when a constitution begins, for a constitution no more begins at a given moment of writing a paper than God begins when a church of stone and mortar is built in a given place at a given time.

But 1215 is a convenient historical date, and may without much quibbling be set down as constitutionally significant. In truth and in fact, Magna Carta is the basis of our liberties because we think so, and would have it so. That not one in a hundred thousand of us has ever so much as glanced at a single word in it, or knows anything of the historical fictions that have grown up about it, does not detract from its greatness.

In our high school and college history books we see pictures of King John properly robed in brilliant colors, surrounded by a brilliant assemblage of the nobility, dejectedly, yet magnificently, signing Magna Carta, the Great Charter of our Liberties. But the facts are that he did not sign it, that he was a plain-looking drably dressed fellow, and that the barons who forced him to agree were a lot of selfish men who, on their way to Runnymede, had stopped in London long enough to slaughter and pillage the Jews.

Moreover, Magna Carta did not set up constitutional government or protect the liberty of the people of England.

It did not guarantee trial by jury.

It gave no guarantee of religious liberty.

Nor habeas corpus.

It did not guarantee equality before the law in any way whatever.

And the prohibition of monopolies, generally claimed as one of its important sections, is simply not a part of it.

"Liberty" was not even mentioned in the instrument. "Liberties" *were* mentioned, but they consisted of special privileges permitting the nobility, instead of the king, to do with the people about as they pleased. Throughout the whole instrument there is no conception of liberty as we today understand it—liberty for men of all degrees and conditions.

It was a reactionary instrument, a sort of private treaty between the King and the nobles and higher clergy. Most of the modern authorities on Magna Carta do not regard it as having had any constitutional worth at the time it was written.

But Professor William S. McKechnie of Glasgow, in his great work, *Magna Carta**, says:

> The greatness of Magna Carta lies not so much in what it was to the framers of 1215, as in what it afterwards became to the political leaders, judges and lawyers, and to the entire mass of men of England in later ages.

Professor McKechnie shows how Magna Carta was picked up by the people as a symbol of justice and liberty, and upon it was built a huge edifice of constitutional rights. He shows that the Charter became a weapon to be repeatedly used by broadening sections and groups of the population in their struggle against despotism.

Historically, the background of Magna Carta was the continued demands for money and service made upon the barons by the King. He kept levying scutage, or war tax, so that he could meddle more in continental wars. He restricted the

*By far the best book on the subject.

feudal rights of the barons. So the baronial party rose and made war on the King. They wanted the King to let them alone, so they could stay home and exploit the people. The people did not rebel, and the barons certainly did not rise on their behalf; in the whole affair the people played no part.

The provisions of Magna Carta are interesting. As I have already shown, it was devoid of constitutional principles. It was merely a contract between the King and certain pompous individuals with resounding titles (see page 200).

It was a long, unparagraphed instrument, with no numbers, and no form to its preamble.

Out of the Preamble and sixty-three chapters into which scholars have divided the Magna Carta, only five chapters have reference to any constitutional principles. Not a single word gives the people any vestige of representative rights; in fact, there is not even an outline for governmental machinery, nor is any method whatever provided for the people to share in the grant.

However, one cannot consider Magna Carta as merely the paper written in 1215. It was re-issued and re-affirmed numerous times by later kings; hence it became not one charter, but physically a series of charters. "Magna Carta" grew into a *concept of liberty* rather than a paper or series of papers.

Economically, as well as symbolically, the Magna Carta was of great importance. It contained provisions constituting a sort of primitive NRA. These covered such matters as the debts of the barons; standardization of measures for wine and cloth; fines; duties of guardians; regulations governing the use of forests, land and water (conservation of natural resources); fees and taxation; the war-making power; the trial of cases; rights of widows; problems of landlord and tenant; and a host of other details that would take a forest of paper to enumerate.

It is true that the number of people directly involved was exceedingly small, because the number of people owning land

was exceedingly small. But after all, the charter did represent the will of more people than did the decrees of one selfish King; in that sense it was an extension of economic and political liberty. This limitation of the King's power by the feudal barons served as an historical precedent for its limitation by the money-changers and merchants of London after Cromwell's time.

Thus Magna Carta gradually grew in the minds of the people as the Great Charter of Liberty. It has proved through our history a sort of spiritual shield of liberty, the original protector of habeas corpus, trial by jury, due protection by the courts of the individual, and all those other rights that make for human decency, dignity, self-respect and free government.

In it are the words used in our own written constitution, "Law of the Land." They are in Chapter 39, considered by most historians and legal writers as the most important provision of Magna Carta. Upon it was developed "due process of law," and many of our theories of justice and of fair court procedure.

Magna Carta was not a people's charter. It changed their miserable lot not one iota. But it did set forth for English-speaking people certain rights and liberties which all men desire and which many have since won. It is the first of a series of documents marking the people's long up-hill battle for their freedom.

9

LIBERTY, PROFIT, AND DISSENTERS

Constitutional Growth in the Colonies

It was early in the sixteen hundreds, and four centuries after Magna Carta, that our ancestors began settling on the mild shores of Virginia and the hard, cold coasts of New England. There had been a gradual and substantial growth of the constitution in those four centuries.

Our ancestors' ideas of Magna Carta and the constitution were vague; but they had the very specific idea that they possessed the same rights as other Englishmen back in England—and under the English constitution. They were quite sure, for example, that they had the right of trial "by jury of the vicinage [vicinity]."

The people who came to Plymouth were Separatists or Dissenters who brought no fond memories of their better-fed Church of England brethren, or of the governing classes. The colonists as a whole were also very poor. Most of them had left England to escape religious or political persecution—or just because it was impossible to make a living. They had not had enough liberty, enough land. They saw in America a chance to be free, and freedom meant, of course, land. Frontier obstacles and opportunities developed self-reliance and self-government. Thus the American, sooner than his English brother across the sea, discovered the practical value of economic and personal liberty.

This migration of people had found a land with resources unparalleled in the world's history—soon the people had products from this rich land to sell to all the world. Merchants made money. Workers got good pay. Here was prosperity—

and, of course, a lot of poverty—and, don't forget, slavery.

But when George III mounted the throne in 1760, he soon began to put the Royal Screws to the American colonists. He was tired of wars that left him with an empty colonial treasury. His colonies were poorly organized. His Royal Highness decided he was a businessman himself, and that it was time to reorganize these impudent plantations beyond the seas and get some coin of the realm out of them to help pay the expenses of their military defense.

By the time George came along, the colonists had come to possess practical *economic* independence, plus a considerable political independence, or autonomy. The merchants, the clergy (other than the Church of England clergy), the people in general were growing more determined not to surrender their newly enjoyed liberties.

They found in their earliest charters good support for their determination—guarantees of all the liberties, franchises, and immunities in anywise appertaining, the said and aforesaid, and a lot of other big words "as if they had been abiding and born within this our Realm of England." Not only did they have their charters, they had the self-reliance and independence of men who have learned to govern themselves. They already had their own Burgesses, Representatives, Mr. Speakers, and the like.

So when the colonists saw their laws declared null and void by their Lordships of the King's Privy Council sitting across the seas in London, they naturally did not like it. For if any judges had such power, it meant the colonists did not have the kind of representative government and liberty they wanted.

During the years before the American Revolution, the Lords of the Privy Council of the King, acting as Supreme Judges, struck down approximately 500 colonial laws which had been written in America, by the Americans' elected representatives. The Privy Council, we should observe, was acting in a capacity

similar to that of the United States Supreme Court when it declares the acts of Congress unconstitutional.*

No court in England had any right, and would not dare attempt, to exercise any such usurpation of the powers of the elected British Parliament.

Obviously, too, the Privy Lords were representing the groups that were exploiting the people of the colonies, and the colonists were at their mercy.

Important laws were slashed down, laws necessary for the welfare of the people in America. Twenty essential and important laws were rejected by the King in Council in 1773. Jefferson said in 1774, "For the most trifling reasons, and sometimes for no conceivable reason at all, his majesty has rejected laws of the most salutary tendency."

For example, various colonies attempted to eliminate the slave trade. *But every single act was declared null and void* in a whole set of Dred Scott decisions denying representative bodies the right to govern. In 1768 Franklin said that this High Court power had "long been a great grievance to the plantations in general." Convicts were dumped on the colonists in spite of colonial laws to the contrary; the High Court merely voided such laws.

All this was detrimental to human dignity—and to the pros-

*For the question of judicial review and the breaking down of colonial laws, see:

1. Russell, "The Review of American Legislation by King in Council," *Studies in Political Science,* Columbia University, Vol. LXIV, No. 2, 1915. An extensive and able study, revealing among other things that 469 colonial laws were knocked out.

2. Schlesinger, "Colonial Appeals to the Privy Council," *Political Science Quarterly,* June and September, 1913. Schlesinger shows how these supreme judges across the seas by a single decision disrupted agriculture. It was analogous to our own high judges voiding the Agricultural Adjustment Act, in that it was an assumption of power by judges.

3. *The Declaration of Independence, An Interpretation and Analysis,* by Herbert Friedenwald. An excellent analysis of the many provisions of the Declaration containing complaints against laws being voided by the Privy Council.

pering commercial interests of large classes of Americans. It was a major cause of the Revolution to come. The "negation" of laws, the refusal of "assent," and various meddlings in colonial government are cited numerous times in the Declaration of Independence, adopted some years later.

There were various events which interpret the period leading up to the Revolution. There was the Albany Plan of Union in 1754, the French and Indian Wars, the Stamp Act Congress in 1765. During that time Amercian-born leaders had begun to arise—businessmen, farmers, lawyers, military officers, sea captains, and "dangerous" agitators. Of all the agitators of the Revolution, Samuel Adams of Boston was about the best. From the time he was a young man, he was exhorting Americans to claim more rights.

His best job of propagandizing grew out of the "Boston Massacre." Some young men of the town had stoned and goaded the British troops into fury and had called them "bloody-backed bastards." The troops fired, killing several of them. Sam picked up the incident, and put the people into a rage over this "awefull massacre."

The "Boston Massacre" was the culmination of a series of incidents cooked up by the merchants of Boston. Many of them, including John Hancock, who was to be the first signer of the Declaration of Independence, were smugglers, according to the prevailing English law. The people in general were getting worked up more and more. The English over the seas knew it.

To mollify the colonists, Parliament repealed the especially obnoxious Townshend Acts. This led to the Boston Tea Party, in 1773, which in turn led to the Boston Port Act, shutting off the sea-borne trade. It tightened up restrictions governing the importation of tea, however, in favor of the East India Company monopoly to show the recalcitrant colonists that it would not give up the right of interference and taxation altogether.

Meantime, Americans were reaching a certain unanimity of

opinion—through a vague combination of "opinions." Apparently, they wanted "liberty," and *independent business;* that is, they wanted more of their share in the land, and the way to get it was to eliminate the political and commercial domination of the Mother Country. This was a part of the newly forming constitutional stream. Their economic "rights" were being interfered with, and such intervention, they claimed, was in violation of the British Constitution.

Matters came to a head in Boston, June 17, 1774, where Sam Adams was continuing his effective job of starting a revolution. He and others insisted that delegates from all the colonies meet in Philadelphia or "other suitable place" upon September first, "to consult upon the present state of the Colonies, and the miseries to which they are and must be reduced . . . by Parliament," and to recommend what should be done "for the recovery and establishment of their just rights and liberties, civil and religious, and the restoration of union and harmony. . . ." It was an evidence of humanity's desire to step forward. As the nobility had demanded rights of King John in 1215 at Runnymede, as in England more groups wanted greater participation in the fruits of the land, here was a still wider group demanding more of the merchant nobility of England.

About the time the leaves of New England and the Eastern seaboard began to redden, earnest men began to move toward the star that shone over Philadelphia.

10

CLOUDS OF REVOLUTION . . . DAGGERS . . . INFANTICIDE . . . MILITARY EXECUTIONERS . . .

The First Continental Congress Meets 1774

There are a number of things we should bear in mind about our worthy forefathers who jolted, horsebacked, coached, and laboriously wended their way to Philadelphia in the fall of 1774. Upon arrival, they did not go up and down Philadelphia ringing bells. They did not then or later stand around in fancy costumes posing for pictures in a constitutional celebration for the edification of posterity. Neither did they bellow about liberty, nor *advocate* revolution. (The suspect Adams', both crabby John and bright old Sam, were told to put on the soft pedal. Said Elbridge Gerry in a letter, "The fruit must have time to ripen.")

What they did do was go to the several inns. They bathed in buckets, got haircuts and shaves. Then they got acquainted.

The delegates had begun to arrive around September first, though the first meeting was not until the fifth. Many names were to loom big in the years to come: Washington, Patrick Henry, John Jay, Peyton Randolph, Richard Henry Lee, John Adams—and John's distant cousin, Samuel Adams, the "Bolshevik" of the time.

Sam was not afraid. Consequently, he was considered "dangerous." The colonial merchants had their fingers in the agitations of the day; they stood to become richer and more powerful if independence came. But every now and then they would get the jitters and think Sam Adams was "going too far." They were like some big manufacturers and bankers of another day who, after they had been helped by a great man, cursed him.

Socially, too, of course, the "better class" found Sam quite impossible. The dour John Adams, speaking of this period many years later, said: "Mr. Samuel Adams was a very artful designing man, but desperately poor and wholly dependent for his popularity upon the lowest vulgar for his living."

Forty delegates came on the fifth; later fifty-two. They got straight to work. Day and night they hit the ball.

The British had prohibited town meetings, but had forgotten to prohibit *county* meetings. On September 16, that romantic and shy fellow, Paul Revere, who had spent his life artistically hammering out silver, but who loved horses and liberty better, arrived in Philadelphia with the Suffolk County Resolves. The very next day the Adams' contrived to introduce them on the floor of the Congress. They passed unanimously.

The Suffolk County Resolves were as radical and ringing a set of resolutions as were ever adopted. With a jolly sense of humor, they simultaneously acknowledged the King and grimly cried out for outright military and civil disobedience. They proclaimed the rights of Americans under the law of nature, and the constitution. England? Why, she was an infanticide, with a dagger at "our bosom." Great Britain? Listen: she "scourged, persecuted, and exiled our fugitive parents from their native shores, and now pursues us, their guiltless children, with unrelenting severity. . . ." The people of America will not be fettered by the shackles of slavery.

British soldiers? Their occupation was "unparalleled usurpation of unconstitutional power . . . the streets of Boston are thronged with military executioners." What, in fact, was the Royal Government doing but framing a "murderous law" to "shelter villains"?

There was also actual suspension of civil law, of the courts, of the British Government itself—a calling out of militia *for* America, and *against* Britain. This was rebellion, nothing else.

The Suffolk County Resolves set the whole tone of the First Continental Congress. Galloway, delegate from Pennsylvania,

who has never received due credit for being the first and one of the biggest traitors to America, was horrified. He proposed an Imperial Constitution. Nobody paid any attention to him; later he fled to England.

On September 22, merchants and all others were *requested* (it was, however, understood as a positive order) to stop all orders of goods until something could be done about "the liberties of America." Five days later, the Non-Importation Resolve was rammed through.

The Non-Importation Resolve was important for two reasons: one, it made it clear that the issues were commerce and trade, or to use a more modern, and finicky word, economic; and two, it marked the real beginning of law-making by an American national representative body. Of course, the Congress was not a legal body; England still controlled. The Congress had no legally accepted way to enforce its acts, although it did so by "moral suasion," of which it had plenty.

By September 30, the Fathers had resolved that exports to Great Britain, Ireland, and the West Indies ought to cease. Before the month of October was out, they had passed two resolutions of tremendous importance: on the fourteenth, the Declaration of American Rights,* and on the twentieth, the Articles of Association. These were important because they tackled the chief problems of the day: the legal and constitutional, and the business or economic.

Many historians assert that the Congressional delegates acted slowly. They did act with caution (frequently expressing their enormous love of Good King George) but we should remember that they were really Englishmen—just beginning to feel their American oats—with the power of the whole

*See *Formation of the Union,* p. 1, where it is referred to as the "Declaration and Resolves of the First Continental Congress." The document itself does not have any such title. The words *American* and *Americans* are used repeatedly, and it is in fact a Declaration of American Rights. Moreover, it is the *first* clear-cut, national declaration of American Rights. See also *Journals of Continental Congress,* Library of Congress Edition, p. 63.

Empire against them. It seems to me they worked with unexampled efficiency and courage.

They knew, also, that many, if not a majority, of the American merchants had turned against them.* This was discouraging, even though a fair share of merchants stayed with the Continental Congress first to last, among them John Hancock, Sam Adams' good and smugglin' friend. But the Congress went right ahead, adopting measures to force the Tory merchants to cooperate. Inasmuch as they had no executive or judicial branches, and were practically only a debating society trying to be a legislature, what they accomplished was miraculous. I know of no modern Congress, with all the power and money in the world, which has acted more promptly and more effectively. Let's take a look at the delegates' major accomplishments.

The Articles covered the commercial field completely—a sort of omnibus measure. They formed a "non-importation, non-consumption, and non-exportation agreement," cutting off all trade with the British Empire. Regulations for merchants and owners of vessels were in effect laws; the word *prohibited* was used; commands were issued; Empire trade was to be broken by various combines, associations, and groups; committees of correspondence were made responsible for carrying out certain duties, including the superintending of British (thereafter American) customhouses and the enforcing of requirements put upon merchants.

There were provisions for developing a domestic economy—agriculture, sheep-raising, industry and manufacture. The people were warned not to waste their time on horse racing, cock-fighting, drinking and dissipation; nor were they to waste too much money on funerals and mourning.

Although the Articles necessarily represented a somewhat English viewpoint, they formed an out-and-out rebellious document drawn up by Americans, and from any viewpoint of the

*For the colonial merchants' part in the Revolution, see Schlesinger.

established government, they were plain treason. Most historians do not hold this view of the Articles, but how they can hold any other, I do not see.

Suppose several of our States should band together, create a Congress of their own, and then interfere with interstate commerce, boycott and penalize those engaged in interstate or foreign trade, disobey federal laws generally, take over customhouses as well as sell imported goods—at the same time expressing love and affection for the President. Would we call it rebellion?

It was the fourteenth of October, 1774, that the Declaration of American Rights was adopted. Although the Declaration of Independence is generally regarded as of much more importance, it seems to me that the Declaration of American Rights is of equal or greater importance, for it came before the Declaration of Independence, and by clearly setting forth constitutional questions formed a basis for the American Constitution.

Among other things, the Declaration of American Rights thoroughly explained the American's idea of his constitutional relationship to England; it ordered the repeal of thirteen acts of Parliament—as well as the collection of duties; and it ordered the British soldiers to go home.

Let the Continental Congress meet. We are assembled. The gentlemen have come to order in Carpenters' Hall of Philadelphia. Listen closely as the clerk reads, for we are about to grasp the spirit of the New America, the spirit of our living Constitution.

11

DECLARATION OF AMERICAN RIGHTS

ADOPTED AT PHILADELPHIA
FIRST CONTINENTAL CONGRESS
OCTOBER 14, 1774

Whereas, since the close of the last war, the British parliament, claiming a power, of right, to bind the people of America by statutes in all cases whatsoever, hath, in some acts, expressly imposed taxes on them, **America** and in others, under various pretences, but in fact for the purpose of raising a revenue, hath imposed rates and duties payable in these colonies, established a board of commissioners, with unconstitutional powers, and extended the jurisdiction of courts of admiralty, not only for collecting the said duties, but for the trial **Unconstitutional** of causes merely arising within the body of a county.

And whereas, in consequence of other statutes, judges, who before held only estates at will in their offices, have been made dependent on the crown alone for their salaries, and standing armies kept in times of **Judges Dependent** peace: And whereas it has lately been re- **on Crown Alone** solved in parliament, that by force of a statute, made in the thirty-fifth year of the reign of King Henry the Eighth, colonists may be transported to England, and tried there upon accusations for treasons and misprisions, or concealments of treasons committed in the colonies, and by a late statute, such trials have been directed in cases therein mentioned:

And whereas, in the last session of parliament, three statutes were made; one entitled, "An act to discontinue, in such manner and for such time as are therein mentioned, the landing and discharging, lading, or shipping **Acts of Parliament** of goods, wares and merchandise, at the **"Unconstitutional"** town, and within the harbour of Boston, in

the province of Massachusetts-Bay in North-America;" another entitled, "An act for the better regulating the government of the province of Massachusetts-Bay in New England;" and another entitled, "An act for the impartial administration of justice, in the cases of persons questioned for any act done by them in the execution of the law, or for the suppression of riots and tumults, in the province of the Massachusetts-Bay in New England;" and another statute was then made, "for making more effectual provision for the government of the province of Quebec, etc."

and

Destructive of American Rights

All which statutes are impolitic, unjust, and cruel, as well as unconstitutional, and most dangerous and destructive of American rights:

Assemblies Dissolved

And whereas, assemblies have been frequently dissolved, contrary to the rights of the people, when they attempted to deliberate on grievances; and their dutiful, humble, loyal, and reasonable petitions to the crown for redress, have been repeatedly treated with contempt, by his Majesty's ministers of state:

The good people of the several colonies of New-Hampshire, Massachusetts-Bay, Rhode-Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Newcastle, Kent, and Sussex on Delaware, Maryland, Virginia, North-Carolina, and South-Carolina, justly alarmed at these arbitrary proceedings of parliament and administration, have severally elected, constituted, and appointed deputies to meet, and sit in general Congress, in the city of Philadelphia, in order to obtain such establishment, as that their religion, laws, and liberties, may not be subverted: Whereupon the deputies so appointed being now assembled, in a full and free representation of these colonies, taking into their most serious consideration, the best means of attaining the ends aforesaid, do, in the first place, as Englishmen, their ancestors in like cases have usually done, for asserting and vindicating their rights and liberties, DECLARE,

Religion Laws Liberties

Declaration of Rights and Liberties

English Constitution, Charters, Compacts, Rights

That the inhabitants of the English colonies in North-America, by the immutable laws of nature, the principles of the English constitution, and the several charters or compacts, have the following RIGHTS:

Life, Liberty and Property

*Resolved, N. C. D.** 1. That they are entitled to life, liberty and property: and they have never ceded to any foreign power whatever, a right to dispose of either without their consent.

Rights, Liberties, Immunities

Resolved, N. C. D. 2. That our ancestors, who first settled these colonies, were at the time of their emigration from the mother country, entitled to all the rights, liberties, and immunities of free and natural-born subjects, within the realm of England.

Constitution Inherited

Resolved, N. C. D. 3. That by such emigration they by no means forfeited, surrendered, or lost any of those rights, but that they were, and their descendants now are, entitled to the exercise and enjoyment of all such of them, as their local and other circumstances enable them to exercise and enjoy.

Foundation of English Liberty

Resolved, 4. That the foundation of English liberty, and of all free government, is a right in the people to participate in their legislative council: and as the English colonists are not represented, and from their local and other circumstances, cannot properly be represented in the British parliament, they are entitled to a free and exclusive power of legislation in their several provincial legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal polity, subject only to the negative of their sovereign, in such manner as has been heretofore used and

Exclusive Right of Legislation Demanded

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*Usually, the "nemcon" of Madison and others. It means *unanimous,* or *nobody contradicting.* My Latin scholar in the Library of Congress says the N. C. D. means in full *nemine contradicente* meaning *nemine* (no one) *contra* (against) *dicente* (speaking), *and that gets the N. C. D.*

accustomed: But, from the necessity of the case, and a regard to the mutual interest of both countries, we cheerfully consent to the operation of such acts of the British parliament, as are bona fide, restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole empire to the mother country, and the commercial benefits of its respective members; excluding every idea of taxation internal or external, for raising a revenue on the subjects, in America, without their consent.

America

Resolved, N. C. D. 5. That the respective colonies are entitled to the common law of England, and more especially to the great and inestimable privilege of being tried by their peers of the vicinage, according to the course of that law.

Common Law of England
Trial by Jury

Resolved, 6. That they are entitled to the benefit of such of the English statutes, as existed at the time of their colonization; and which they have, by experience, respectively found to be applicable to their several local and other circumstances.

Local Rights

Resolved, N. C. D. 7. That these, his majesty's colonies, are likewise entitled to all the immunities and privileges granted and confirmed to them by royal charters, or secured by their several codes of provincial laws.

Charters
Provincial Laws

Resolved, N. C. D. 8. That they have a right peaceably to assemble, consider of their grievances, and petition the king; and that all prosecutions, prohibitory proclamations, and commitments for the same, are illegal.

Assembly, Petition

Resolved, N. C. D. 9. That the keeping a standing army in these colonies, in times of peace, without the consent of the legislature of that colony, in which such army is kept, is against law.

Resolved, N. C. D. 10. It is indispensably necessary to good government, and rendered essential by the English constitution, that the constituent branches of the legislature be independent of each other; that, therefore,

English Constitution

the exercise of legislative power in several colonies, by a council appointed, during pleasure, by the crown, is unconstitutional, dangerous and destructive to the freedom of American legislation. **Unconstitutional** **American Legislation**

All and each of which the aforesaid deputies, in behalf of themselves, and their constituents, do claim, demand, and insist on, as their indubitable rights and liberties; which cannot be legally taken from them, altered or abridged by any power whatever, without their own consent, by their representatives in their several provincial legislatures. **Rights and Liberties**

In the course of our inquiry, we find many infringements and violations of the foregoing rights, which, from an ardent desire, that harmony and mutual intercourse of affection and interest may be restored, we pass over for the present, and proceed to state such acts and measures as have been adopted since the last war, which demonstrate a system formed to enslave America. **America**

Resolved, N. C. D. That the following acts of parliament are infringements and violations of the rights of the colonists; and that the repeal of them is essentially necessary, in order to restore harmony between Great-Britain and the American colonies, viz. **Infringement of Personal Rights**

The several acts of 4 Geo. III. ch. 15, and ch. 34.—5 Geo. III. ch. 25.—6 Geo. III. ch. 52.—7 Geo. III. ch. 41. and ch. 46.—8 Geo. III. ch. 22. which impose duties for the purpose of raising a revenue in America, extend the power of the admiralty courts beyond their ancient limits, deprive the American subject of trial by jury, authorise the judges certificate to indemnify the prosecutor from damages, that he might otherwise be liable to, requiring oppressive security from a claimant of ships and goods seized, before he shall be allowed to defend his property, and are subversive of American rights. **Words *America* or *American* Used Four Times** **Amounts to Claim of Separate Sovereignty**

Also 12 Geo. III. ch. 24. intituled, "An act for the better securing his majesty's dockyards, magazines, ships, ammunition, and stores," which declares a new offence in America, and deprives the American subject of a constitutional trial by jury of the vicinage, by authorising the trial of any person, charged with the committing any offence described in the said act, out of the realm, to be indicted and tried for the same in any shire or county within the realm.

America Trial by Jury

Also the three acts passed in the last session of parliament, for stopping the port and blocking up the harbour of Boston, for altering the charter and government of Massachusetts-Bay, and that which is entitled, "An act for the better administration of justice, etc."

Altering Charter and Government

Also the act passed in the same session for establishing the Roman Catholic religion, in the province of Quebec, abolishing the equitable system of English laws, and erecting a tyranny there, to the great danger (from so total a dissimilarity of religion, law and government) of the neighbouring British colonies, by the assistance of whose blood and treasure the said country was conquered from France.

Also the act passed in the same session, for the better providing suitable quarters for officers and soldiers in his majesty's service, in North-America.

Also, that the keeping a standing army in several of these colonies, in time of peace, without the consent of the legislature of that colony, in which such army is kept, is against law.

"Americans cannot submit"

To these grievous acts and measures, Americans cannot submit, but in hopes their fellow subjects in Great-Britain will, on a revision of them, restore us to that state, in which both countries found happiness and prosperity, we have for the present, only resolved to pursue the following peaceable measures: 1. To enter into a non-importation, non-consumption, and non-exportation agreement or association.

1. Non-importation, Non-consumption, Non-exportation

2. To prepare an address to the people of Great-Britain, and a memorial to the inhabitants of British America: and 3. To prepare a loyal address to his majesty, agreeable to resolutions already entered into.*

2. Address to British, Memorial to British America

3. Address to King

* *Journals of Congress* (ed. 1800), I., pp. 26-30.

12

THE BATTALION OF DEATH— OUR UNWRITTEN CONSTITUTION

Colonial Warfare and Constitutional Development

Certainly we must realize that the Declaration of American Rights formed the headwaters of the American constitutional stream which was soon to flow freely.

The spirit of that document springing from the tempo of those days was the important thing. The writing did not constitute a law drawn from on high, but merely an expression of the developing thoughts and ideals of the people. The expression of these thoughts gave life and breath and spirit to the America that was coming into being.

The combination of ink and paper that formed the Declaration of American Rights may not have been so legally sophisticated as that other combination of ink and paper, which was to be adopted fifteen years later and called "The Constitution." But it was a truly constitutional document of basic importance. It marked the toughening fiber of a young, growing nation entering upon unified preparation for war.

Soon guns cracked in Lexington and Concord. That was on April 19, 1775. They were *American* guns fired at British soldiers; for the Redcoats had been sticking their noses into these towns to ferret out ammunition—thriftily stored for use on these same gentlemen who wore red coats in the name of our then monarch, King George III.

There had been other brushes between American and British, but the Battles of Lexington and Concord are usually recorded as the first in the American Revolution. Thereafter, the Continentals went at their job with method and, for the times, with excellent speed. Ethan Allen and the then patriotic Benedict

Arnold captured Ticonderoga on May 10, 1775. There were naval engagements. By June 17th, Washington had been chosen commander-in-chief of the American Army. On the same day, at the Battle of Bunker Hill, a part of that Army gained confidence by fighting.

All of the human thoughts connected with these events, meetings, bloodshed, hardships, writing of documents, became a part of the already living American constitution. The written Constitution later adopted at Philadelphia is by no means our entire constitution. Constitutional liberty cannot be written into one document, or even many documents.

For the unwritten and living concept there is plenty of conservative authority in America. There is, for example, Judge Hatton W. Sumners, Chairman of the Judiciary Committee of the House of Representatives of the United States, said to be the man who finally defeated the President's plan to "pack" the Supreme Court, and a true champion iron-ribbed arch-conservative of the arch-conservatives. On Sept. 29, 1937, in Kansas City, he delivered before the American Bar Association an address that has become famous as the "Battalion of Death" speech to "save the Constitution." Here is what Judge Sumners said:

> There were great men who sat in the Constitutional Convention *but it has been withheld from human genius to write the constitution of a living government. It never was done and never will be, in a creative sense.**

Also:

> All the pre-Declaration of Independence row was not that we didn't have a constitution. . . . *The row*

*My italics.

*was that we had a constitution and King George and the Parliament were violating it.**

We didn't have a revolution in this country in an ordinary sense. We had a territorial secession and resort to arms *to preserve an existing constitution. . . .**

Let us bear in mind that a living constitution is a series of events, experiences, hardships, emotions, which can be only partially incorporated into written documents; and that the people generally always enact their constitutional documents long after they have actually begun to exercise the rights which they have put on paper. Constitutional documents, whether called ordinances, constitutions, or charters, are milestones of achievement.

A document written after substantial achievement, or in confirmation of what had been done, was the Declaration and Necessity of Taking Up Arms, July 6, 1775—written nearly two years after the Declaration of American Rights, and after two years of warfare and great hardship. Millions should read and study it.

But once again we are with the Continental Congress in Philadelphia. Clerk Thompson is about to read the resolution, one of the most stirring chapters in our constitutional story. Look at the expressions of the gentlemen of the Congress—you will see they mean business, and that the business is blood, and more of it.

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*My italics.

13

DECLARATION OF THE CAUSES AND NECESSITY OF TAKING UP ARMS, JULY 6, 1775*

A Declaration by the Representatives of the United Colonies of North-America, now met in Congress at Philadelphia, setting forth the causes and necessity of their taking up arms

If it was possible for men, who exercise their reason to believe, that the divine Author of our existence intended a part of the human race to hold an absolute property in, and an unbounded power over others, marked out by his infinite goodness and wisdom, as the objects of a legal domination never rightfully resistible, however severe and oppressive, the inhabitants of these colonies might at least require from the parliament of Great-Britain some evidence, that this dreadful authority over them, has been granted to that body. But a reverence for our great Creator, principles of humanity, and the dictates of common sense, must convince all those who reflect upon the subject, that government was instituted to promote the welfare of mankind, and ought to be administered for the attainment of that end. The legislature of Great-Britain, however, stimulated by an inordinate passion for a power not only unjustifiable, but which they know to be peculiarly reprobated by the very constitution of that kingdom, and desparate of success in any mode of contest, where regard should be had to truth, law, or right, have at length, deserting those, attempted to effect their cruel and impolitic purpose of enslaving these colonies by violence, and have thereby rendered it necessary for us to close with their last appeal from reason to arms.—Yet, however blinded that assembly may be, by their intemperate rage for unlimited domination, so to slight justice and the opinion of mankind, we esteem ourselves bound by obliga-

* *Formation of Union,* p. 10, *Journals of Continental Congress,* volume 2, p. 140, Library of Congress.

tions of respect to the rest of the world, to make known the justice of our cause.

Our forefathers, inhabitants of the island of Great-Britain, left their native land, to seek on these shores a residence for civil and religious freedom. At the expense of their blood, at the hazard of their fortunes, without the least charge to the country from which they removed, by unceasing labour, and an unconquerable spirit, they effected settlements in the distant and inhospitable wilds of America, then filled with numerous and warlike nations of barbarians.—Societies or governments, vested with perfect legislatures, were formed under charters from the crown, and an harmonious intercourse was established between the colonies and the kingdom from which they derived their origin. The mutual benefits of this union became in a short time so extraordinary, as to excite astonishment. It is universally confessed, that the amazing increase of the wealth, strength, and navigation of the realm, arose from this source; and the minister, who so wisely and successfully directed the measures of Great-Britain in the late war, publicly declared, that these colonies enabled her to triumph over her enemies.—Towards the conclusion of that war, it pleased our sovereign to make a change in his counsels.—From that fatal moment, the affairs of the British empire began to fall into confusion, and gradually sliding from the summit of glorious prosperity, to which they had been advanced by the virtues and abilities of one man, are at length distracted by the convulsions, that now shake it to its deepest foundations.—The new ministry finding the brave foes of Britain, though frequently defeated, yet still contending, took up the unfortunate idea of granting them a hasty peace, and of then subduing her faithful friends.

These devoted colonies were judged to be in such a state, as to present victories without bloodshed, and all the easy emoluments of statuteable plunder.—The uninterrupted tenor of their peaceable and respectful behaviour from the beginning of colonization, their dutiful, zealous, and useful services during the war, though so recently and amply acknowledged in the most honourable manner by his majesty, by the late king, and by parliament, could not save them from the meditated innovations.—Parliament was influenced to adopt the pernicious project, and assuming a new power over them, have in the course of eleven years, given such decisive speci-

mens of the spirit and consequences attending this power, as to leave no doubt concerning the effects of acquiescence under it. They have undertaken to give and grant our money without our consent, though we have ever exercised an exclusive right to dispose of our own property; statutes have been passed for extending the jurisdiction of courts of admiralty and vice-admiralty beyond their ancient limits; for depriving us of the accustomed and inestimable privilege of trial by jury, in cases affecting both life and property; for suspending the legislature of one of the colonies; for interdicting all commerce to the capital of another; and for altering fundamentally the form of government established by charter, and secured by acts of its own legislature solemnly confirmed by the crown; for exempting the "murderers" of colonists from legal trial, and in effect, from punishment; for erecting in a neighbouring province, acquired by the joint arms of Great-Britain and America, a despotism dangerous to our very existence; and for quartering soldiers upon the colonists in time of profound peace. It has also been resolved in parliament, that colonists charged with committing certain offences, shall be transported to England to be tried.

But why should we enumerate our injuries in detail? By one statute it is declared, that parliament can "of right make laws to bind us in all cases whatsoever." What is to defend us against so enormous, so unlimited a power? Not a single man of those who assume it, is chosen by us; or is subject to our controul or influence; but, on the contrary, they are all of them exempt from the operation of such laws, and an American revenue, if not diverted from the ostensible purposes for which it is raised, would actually lighten their own burdens in proportion, as they increase ours. We saw the misery to which such despotism would reduce us. We for ten years incessantly and ineffectually besieged the throne as supplicants; we reasoned, we remonstrated with parliament, in the most mild and decent language.

Administration sensible that we should regard these oppressive measures as freemen ought to do, sent over fleets and armies to enforce them. The indignation of the Americans was aroused, it is true; but it was the indignation of a virtuous, loyal, and affectionate people. A Congress of delegates from the United Colonies was assembled at Philadelphia, on the fifth day of last September. We

resolved again to offer an humble and dutiful petition to the King, and also addressed our fellow-subjects of Great-Britain. We have pursued every temperate, every respectful measure: we have even proceeded to break off our commercial intercourse with our fellow-subjects, as the last peaceable admonition, that our attachment to no nation upon earth should supplant our attachment to liberty.—This, we flattered ourselves, was the ultimate step of the controversy: but subsequent events have shewn, how vain was this hope of finding moderation in our enemies.

Several threatening expressions against the colonies were inserted in his majesty's speech; our petition, tho' we were told it was a decent one, and that his majesty had been pleased to receive it graciously, and to promise laying it before his parliament, was huddled into both houses among a bundle of American papers, and there neglected. The lords and commons in their address, in the month of February, said, that "a rebellion at that time actually existed within the province of Massachusetts-Bay; and that those concerned in it, had been countenanced and encouraged by unlawful combinations and engagements, entered into by his majesty's subjects in several of the other colonies; and therefore they besought his majesty, that he would take the most effectual measures to inforce due obedience to the laws and authority of the supreme legislature."—Soon after, the commercial intercourse of whole colonies, with foreign countries, and with each other, was cut off by an act of parliament; by another several of them were intirely prohibited from the fisheries in the seas near their co[*a*]sts, on which they always depended for their sustenance; and large reinforcements of ships and troops were immediately sent over to general Gage.

Fruitless were all the entreaties, arguments, and eloquence of an illustrious band of the most distinguished peers, and commoners, who nobly and stren[*u*]ously asserted the justice of our cause, to stay, or even to mitigate the heedless fury with which these accumulated and unexampled outrages were hurried on.—Equally fruitless was the interference of the city of London, of Bristol, and many other respectable towns in our favour. Parliament adopted an insidious manoeuvre calculated to divide us, to establish a perpetual auction of taxations where colony should bid against colony, all of them uninformed what ransom would redeem their lives; and thus to

extort from us, at the point of the bayonet, the unknown sums that should be sufficient to gratify, if possible to gratify, ministerial rapacity, with the miserable indulgence left to us of raising, in our own mode, the prescribed tribute. What terms more rigid and humiliating could have been dictated by remorseless victors to conquered enemies? in our circumstances to accept them, would be to deserve them.

Soon after the intelligence of these proceedings arrived on this continent, general Gage, who in the course of the last year had taken possession of the town of Boston, in the province of Massachusetts-Bay, and still occupied it is [*as*] a garrison, on the 19th day of April, sent out from that place a large detachment of his army, who made an unprovoked assault on the inhabitants of the said province, at the town of Lexington, as appears by the affidavits of a great number of persons, some of whom were officers and soldiers of that detachment, murdered eight of the inhabitants, and wounded many others. From thence the troops proceeded in warlike array to the town of Concord, where they set upon another party of the inhabitants of the same province, killing several and wounding more, until compelled to retreat by the country people suddenly assembled to repel this cruel aggression. Hostilities, thus commenced by the British troops, have been since prosecuted by them without regard to faith or reputation.—The inhabitants of Boston being confined within that town by the general their governor, and having, in order to procure their dismission, entered into a treaty with him, it was stipulated that the said inhabitants having deposited their arms with their own magistrates, should have liberty to depart, taking with them their other effects. They accordingly delivered up their arms, but in open violation of honour, in defiance of the obligation of treaties, which even savage nations esteemed sacred, the governor ordered the arms deposited as aforesaid, that they might be preserved for their owners, to be seized by a body of soldiers; detained the greatest part of the inhabitants in the town, and compelled the few who were permitted to retire, to leave their most valuable effects behind.

By this perfidy wives are separated from their husbands, children from their parents, the aged and sick from their relations and friends, who wish to attend and comfort them; and those who have been

used to live in plenty and even elegance, are reduced to deplorable distress.

The general, further emulating his ministerial masters, by a proclamation bearing date on the 12th day of June, after venting the grossest falsehoods and calumnies against the good people of these colonies, proceeds to "declare them all, either by name or description, to be rebels and traitors, to supersede the course of the common law, and instead thereof to publish and order the use and exercise of the law martial."—His troops have butchered our countrymen, have wantonly burnt Charlestown, besides a considerable number of houses in other places; our ships and vessels are seized; the necessary supplies of provisions are intercepted, and he is exerting his utmost power to spread destruction and devastation around him.

We have received certain intelligence, that general Carelton [*Carleton*], the governor of Canada, is instigating the people of that province and the Indians to fall upon us; and we have but too much reason to apprehend, that schemes have been formed to excite domestic enemies against us. In brief, a part of these colonies now feel, and all of them are sure of feeling, as far as the vengeance of administration can inflict them, the complicated calamities of fire, sword, and famine. We* are reduced to the alternative of chusing an unconditional submission to the tyranny of irritated ministers, or resistance by force.—The latter is our choice.—We have counted the cost of this contest, and find nothing so dreadful as voluntary slavery.—Honour, justice, and humanity, forbid us tamely to surrender that freedom which we received from our gallant ancestors, and which our innocent posterity have a right to receive from us. We cannot endure the infamy and guilt of resigning succeeding generations to that wretchedness which inevitably awaits them, if we basely entail hereditary bondage upon them.

Our cause is just. Our union is perfect. Our internal resources are great, and, if necessary, foreign assistance is undoubtedly attainable.—We gratefully acknowledge, as signal instances of the Divine favour towards us, that his Providence would not permit us to be called into this severe controversy, until we were grown up to our present strength, had been previously exercised in warlike operation,

*From this point the declaration follows Jefferson's draft.

and possessed of the means of defending ourselves. With hearts fortified with these animating reflections, we most solemnly, before God and the world, *declare,* that, exerting the utmost energy of those powers, which our beneficent Creator hath graciously bestowed upon us, the arms we have been compelled by our enemies to assume, we will, in defiance of every hazard, with unabating firmness and perseverence, employ for the preservation of our liberties; being with one mind resolved to die freemen rather than to live slaves.

Lest this declaration should disquiet the minds of our friends and fellow-subjects in any part of the empire, we assure them that we mean not to dissolve that union which has so long and so happily subsisted between us, and which we sincerely wish to see restored.—Necessity has not yet driven us into that desperate measure, or induced us to excite any other nations to war against them.—We have not raised armies with ambitious designs of separating from Great-Britain, and establishing independent states. We fight not for glory or for conquest. We exhibit to mankind the remarkable spectacle of a people attacked by unprovoked enemies, without any imputation or even suspicion of offence. They boast of their privileges and civilization, and yet proffer no milder conditions than servitude or death.

In our own native land, in defence of the freedom that is our birthright, and which we ever enjoyed till the late violation of it—for the protection of our property, acquired solely by the honest industry of our fore-fathers and ourselves, against violence actually offered, we have taken up arms. We shall lay them down when hostilities shall cease on the part of the aggressors, and all danger of their being renewed shall be removed, and not before.

With an humble confidence in the mercies of the supreme and impartial Judge and Ruler of the Universe, we most devoutly implore his divine goodness to protect us happily through this great conflict, to dispose our adversaries to reconciliation on reasonable terms, and thereby to relieve the empire from the calamities of civil war.

14

THE KING OF AMERICA

Tom Paine and the Continental Constitution

After the adoption of this Declaration of Causes and Necessity of Taking Up Arms, which confirmed the bloody break that had taken place, there could be no compromise. For those who had participated in this Revolution, it was either death as traitors, or life in a new nation as patriots. The dice were thrown, and no one knew whether the winning number was coming up or not.

Officially, the Revolution had never been declared. Officially, and according to the Continental Congress, the American people, with their frontiersmen's contempt for titles, were still loyal subjects of George III, by the grace of God, King of Great Britain, France, and Ireland, and the Plantations beyond the Seas, Defender of the Faith, and Sovereign of the most noble Order of the Garter, Duke of Brunswick and Lunenberg, Arch-Treasurer and Prince Elector of the Holy Roman Empire.

The protests of loyalty were not exactly hypocritical. It was as if a couple were privately fighting and wrangling and planning a divorce, while in public they were feigning mutual love. The records of the Continental Congress contain messages and proclamations of the delegates' great amity and good will to their "British brethren." Immediately following are resolutions to build more powder mills to carry on the war. But the members of the Continental Congress had long before made up their minds to get rid of the Royal meddlers. This Declaration was an evidence of the unanimity of sentiment that was strengthening the growing American Constitution.

Into the picture came the dramatic genius of Tom Paine, usually referred to as an Englishman, because he did not come

to America until 1774. He had been a clerk in the excise service of Britain. The pay and conditions of the excisemen were outrageous. Paine did some agitating; he got fired, say the British, for his debts. He met Benjamin Franklin, then in London, and made friends with him. Franklin gave him letters of introduction. Paine left for America and there joined the Revolution. He did inestimable service to the cause of America, but was treated like a dog for his later writings, which very few people had read.

But everybody read his first notable work, *Common Sense.* In it he caught the spirit of the people, put it to ink and paper, and made a sort of proclamation of it. *Common Sense* was first printed January 9, 1776, helping pave the way for the Declaration of Independence, which came six months later.

Because *Common Sense* crystallized what the people had been thinking for a long time in a vague and scattered way, it received wide distribution—became America's first "Best Seller." Recounting grievances, fanning high the red hot flames of independence, *Common Sense* was a constitutional document of the highest order, and at the same time a powerful piece of propaganda.

Paine first set about demonstrating that the English constitution had become rotten, comparing attachment to England to attachment to a prostitute. He proved that the institution of monarchy and divine right was opposed to Scripture, and that kings in general were bad.

Then he said:

> The Sun never shined on a cause of greater worth. 'Tis not the affair of a City, a County, a Province, or a Kingdom; but of a *Continent.**

He gave Americans an expansive pride in fighting for their liberty, a feeling of being a part of a land which was their own

*My italics. Watch for this word, *continent.*

—a land in which no outside King or tyrant should have a word to say. Through the magic of his words the American people and their land were transformed and fused into a living nation.

Nor did he forget groceries:

> The commerce by which she hath enriched herself are the necessaries of life, and will always have a market while eating is the custom of Europe. . . .

He proceeded to exhortations, demanded separation, and spoke of the blood of the slain. "'TIS TIME TO PART!" he cried out, and continued:

> The present winter is worth an age if rightly employed, but if lost or neglected the whole Continent will partake of the misfortune; and there is no punishment which that man doth not deserve, be he who, or what, or where he will, that may be the means of sacrificing a season so precious and useful.

Knowing that the colonists possessed the popular concept of Magna Carta and that they were in the process of adding to that concept, Paine proceeded to some very clever writing:

> . . . Is there any inhabitant of America so ignorant as not to know, that according to what is called the *present constitution,* this Continent can make no laws but what the King gives leave to?

He said that nothing but separation, a *continental form of government,* was possible; that the people should stop the ridiculous practice of always petitioning the King; that, with a continental form of government, the continent should be *preserved inviolate.*

But Tom Paine was no mere theorist; he gave the details of how this could be established; he set out exactly how it should be done. First, he proposed the manner in which representatives should be selected, and then proceeded:

> The conferring members being met, let their business be to frame a Continental Charter, or Charter of the United Colonies; (answering to what is called the Magna Charta of England) fixing the number and manner of choosing Members of Congress, Members of Assembly, with their date of sitting; and drawing the line of business and jurisdiction between them: Always remembering, that our strength is Continental, not Provincial.
>
> . . . Securing freedom and property to all men, and above all things, the free exercise of religion, according to the dictates of conscience; with such other matter as it is necessary for a charter to contain.
>
> Immediately after which, the said conference to dissolve, and the bodies which shall be chosen conformable to the said charter, to be the Legislators and Governors of this continent for the time being: Whose peace and happiness, may God preserve.
>
> AMEN.

But Paine knew the people still revered the Crown, as a *symbol.* So he made a personal villain and a brute of the King, and at the same time used another King as a symbol, and put it up for all to see and worship. Tom asks, "But where, say some, is the King of America?"

And the answer is sacred, symbolistic:

> I'll tell you, my friends. He reigns above, and doth not make havoc like the Royal Brute of Great Britain.

> . . . Yet that we may not appear to be defective even in earthly honours, let a day be solemnly set apart for proclaiming the Charter.
>
> Let it be brought forth placed on the Divine Law, the Word of God.
>
> Let a Crown be placed thereon, by which the world may know, that so far as we approve of monarchy, that in America the *LAW* is king! For as in absolute governments the King is law, so in free countries the law ought to be King; and there ought to be no other.
>
> . . . Lest any ill use should afterwards arise, let the Crown at the conclusion of the ceremony be demolished, and scattered among the people whose right it is.
>
> A government of our own is our natural right: and when a man seriously reflects on the precariousness of human affairs, he will become convinced, that it is infinitely wiser and safer, to form a constitution of our own in a cool deliberate manner, while we have it in our power, than to trust such an interesting event to time and chance.

Thereafter, Paine proceeded to say that the people should leave an *independent* constitution to posterity. He pointed to the marvelous resources of the new continent, and warns that the new law must be for *the whole*. The people must have "domestic tranquility."

At any rate, the work of Thomas Paine actually stirred the colonists, and let them know they were in on a *single* idea, and *common* cause.

Now men were everywhere following this *common sense*, advocating separation and independence. Before long, people wanted it written out, so the whole world could see.

So let us look at the written mechanics of revolution.

15

FREE . . . FROM THE BRITISH CROWN

Declaration of Independence, Signed August 2, 1776

The writing, the preparation, and the background of the American Declaration of Independence form one of the most intriguing and dramatic chapters in the world's history.

Quite important is the fact that the Declaration made no criticism of the British Parliament—of *representative government,* that is. All the trouble was laid at the door of the King and of the King's Privy Council, one of whose functions was to act in the capacity of Supreme Court of the Empire. As I pointed out in an earlier chapter, it is abundantly established that the colonists deeply resented the power of the King's Council to set aside, hold up, or declare null and void the laws of the colonial legislature. Jefferson never changed his mind on judicial supremacy, or the usurpation of power by the Supreme Court to declare acts of Congress unconstitutional. This was shown by his numerous criticisms of Chief Justice John Marshall, and of the increasing power over the elected representatives of the people.

Although I can find no supporting evidence, I believe that omission of specific criticism and mention of the British Parliament in the final draft may be ascribed to the fact that Jefferson and his colleagues wanted no aspersions cast on representative government, and expected to establish truly representative government in the United States, wherein there would be no King, no nobility, and no high court to curtail the liberty of the people.

The great importance of the Declaration, like that of the other documents which we have already studied, has been whittled away by mechanics of the law in order to give rigidity

and unique importance to the written Constitution of 1787. Once I said to a lawyer friend of mine that the Declaration was a part of our constitution, our living constitution. Of course, the answer was the usual one, and for that matter, the technically correct one: that the Declaration is not a part of the Constitution—that the Constitution is supreme over all preceding acts or actions.

Sure.

But if the Declaration is not in effect, then we are still a part of the British Empire. Therefore, though strict adherence to technically correct theorizing must force us to admit that the Declaration is not a part of our written Constitution, yet it is a part of the true living constitution of the United States of America.

Thomas Jefferson was the real creator of the Declaration, though he was helped considerably by John Adams, Benjamin Franklin, Robert R. Livingston and Roger Sherman, all of whom served on the drafting committee with him. Jefferson was a shy fellow. To speak before large crowds was agony for him. But he could write in unusually colorful and surging phrases.

Numerous drafts of the Declaration were made. The "Lee Copy" (Chapter 16) is, I think, the most interesting because it contains the strike-outs and additions. Note that the words "British Parliament" are struck out; that some dreadfully melodramatic phrases got the blue pencil; and that the clause prohibiting the slave traffic was eliminated. The melodramatic phrases irritated some of the committeemen, and I suspect old John Adams of helping to cut Jefferson's condemnation of the slave trade; for Adams represented the slavers of New England. There is no proof except that John Adams denied it, quite gratuitously, for the rest of his life. Hence I may be wrong.

A few technical historical facts are worth remembering though not significant from a constitutional viewpoint:

First, the Declaration of Independence was *not* signed on the Fourth of July.

Second, it was not the *official* Act of Independence, nor by any stretch of imagination can it be said that it produced independence.

Indeed, the official Act of Independence, generally known as the Resolution of Independence, was adopted earlier, July 2, 1776, and *was an entirely different, and separate act.*

By that, we officially, legally, constitutionally, quit keeping company with the British King.

The Resolution contained no windy explanations; the colonists had been explaining long enough. Here it is, every word of it:

> *Resolved,* that these United Colonies are, and, of right, ought to be, Free and Independent States, that they are absolved from all allegiance to the British Crown, and that all political connexion between them, and the state of Great Britain, is, and ought to be, totally dissolved.

The above is all that appears in the *Journals of Continental Congress* as having finally passed,* although these additional words were a part of the resolution which had been previously (June 6) introduced by Richard Henry Lee:

> That it is expedient forthwith to take the most effectual measures for forming foreign alliances.
>
> That a plan of confederation be prepared and transmitted to the respective Colonies for their consideration and approbation.†

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* *Journals of Continental Congress,* Vol. V, Library of Congress Edition, p. 507, original writing, Library of Congress, in hand of Thompson, clerk of Congress.

† *Journals of Continental Congress,* Vol. V, p. 425; *Formation of Union,* 21, original writing, Library of Congress, in hand of Lee, including first part of minor differences in punctuation and spelling.

It was short and to the point. Our forefathers were now dead tired of protesting their love for the King, whom they hated like the Devil and all his works. They were tired of speeches and orations. This was final irrevocable divorce.

Further, they wanted to tell the world what had happened. Since Jefferson was the writing man of the group, they appointed him to draft the Declaration of Independence. It was to be a vindication of the colonists and an announcement, an *advertisement* to the world, that the United States of America was out on her own hook, and not taking orders from the old head of the family. And Jefferson sure made a good job of it.

The Declaration as originally written had punch lines and punch paragraphs, as the newspaper men say. When it came out of the legislative mill, it was, like the Magna Carta, one long dreary instrument without paragraphs. Preceding what had been paragraphs were long lines or dashes. Whoever changed it belongs to that tribe of clerks that has ever made the life of the lawmaker one of irritation. The copy adopted by Congress you will find on page 218, with all corrections.

I have seen the original Lee Copy of the Declaration. In reproducing it, I feel I should give credit for the idea to Dr. Carl Becker, and I have generally followed his version, changing the spelling here and there to what I believe to be closest to the original.

Pleasant Mr. Jefferson of Virginia, stuffy Mr. Adams of Massachusetts, with their colleagues, have now left their room, and are reporting their final draft to the Continental Congress. The clerk will read haltingly,* for there are numerous underlinings, scratch-outs, and changes. As the clerk reads slowly and with labor, we shall watch the various gentlemen as they ask questions here and there.

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*The Lee Copy was not read to Congress. But the final draft was, to all intents and purposes, the same. The final draft of the Committee has not been preserved. Probably when the actual draft to be adopted was printed, the clerk regarded the last script of no importance, and threw it away.

16

THE DECLARATION OF INDEPENDENCE *

A Declaration by the Representatives of the UNITED STATES OF AMERICA in General Congress assembled.

When in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of nature and of nature's god entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident; that all men are created equal; that they are endowed by their Creator with ~~inherent~~ *certain un* ~~and~~ ~~in~~alienable † rights; that among these are life; liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying it's foundation on such principles, and organising it's powers in such form as to them shall seem most likely to effect their safety and happiness. prudence indeed will dictate that governments long established should not be changed for light & transient causes. and accordingly all

* This is the Lee Copy of the Declaration of Independence. As it reads it is almost exactly like the final form which was adopted by the Continental Congress. There were several drafts, the Committee working night and day to get a good one. There is also a "Rough Draft" still in existence, deposited at the Library of Congress. It, however, does not show the corrections as indicated in the Lee Copy, here used. This does not show all the work of the Committee, nor all the changes, because of the numerous drafts, but it does give the reader an idea of the Committee work, and also shows many important changes which were made.

† It was first *in*alienable. In the so-called Rough Draft John Adams wrote it "*un*alienable." Anyhow, the printer made it "un" in the final form.

experience hath shewn that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. but when a long train of abuses and usurpations, ~~begun at a distinguished period &~~ pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, & to provide new guards for their future security. such has been the patient sufferance of these colonies, & such is now the necessity which constrains them to ~~expunge~~ *alter* their former systems of government. the history of the present king of Great Britain, is a history of ~~unremitting~~ *repeated* injuries and usurpations, ~~among which appears no solitary fact to contradict the uniform tenor of the rest; but~~ all ~~have~~ *having* in direct object the establishment of an absolute tyranny over these states. to prove this let facts be submitted to a candid world, ~~for the truth of which we pledge a faith yet unsullied by falsehood.~~*

He has refused his assent to laws the most wholesome and necessary for the public good.

he has forbidden his governors to pass laws of immediate & pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has *utterly* neglected ~~utterly~~ to attend to them.

he has refused to pass other laws for the accomodation of large districts of people, unless those people would relinquish the right of representation in the legislature; a right inestimable to them, & formidable to tyrants only.

he has called together legislative bodies at places unusual, uncomfortable, & distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

he has dissolved Representative houses repeatedly ~~& continually~~, for opposing with manly firmness his invasions on the rights of the people.

* Some of this and other passages were considered too oratorical by the Committee members.

he has refused for a long time after such dissolutions to cause others to be elected whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise, the state remaining in the meantime exposed to all the dangers of invasion from without, & convulsions within.

he has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migrations hither; & raising the conditions of new appropriations of lands.

he has ~~suffered~~ *obstructed* the administration of justice ~~totally to cease in some of these states~~, *by* refusing his assent to laws for establishing judiciary powers.

he has made ~~our~~ judges dependant on his will alone, for the tenure of their offices, and the amount & paiment of their salaries.

he has erected a multitude of new offices ~~by a self-assumed power~~, & sent hither swarms of officers to harrass our people, and eat out their substance.

he has kept among us, in times of peace, standing armies ~~and ships of war~~, without the consent of our legislatures.

he has affected to render the military independant of, & superior to, the civil power.

he has combined with others to subject us to a jurisdiction foreign to our constitutions and unacknoleged by our laws; giving his assent to their acts of pretended legislation.

for quartering large bodies of armed troops* among us;

for protecting them by a mock-trial from punishment for any murders which they should commit on the inhabitants of these states;

for cutting off our trade with all parts of the world;

for imposing taxes on us without our consent;

for depriving us *in many cases* of the benefits of trial by jury;

for transporting us beyond seas to be tried for pretended offences;

for abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and en-

* The text in the corrected *Journal* reads "bodies of troops."

larging it's boundaries so as to render it at once an example & fit instrument for introducing the same absolute rule into these states;

for taking away our charters, abolishing our most valuable laws, and altering fundamentally the forms of our governments;

for suspending our own legislatures, & declaring themselves invested with power to legislate for us in all cases whatsoever.

he has abdicated government here, ~~withdrawing his governors,~~ *and waging war against us* ~~&~~ *by* declaring us out of ~~his allegiance and~~ protection.

he has plundered our seas, ravaged our coasts, burnt our towns, & destroyed the lives of our people.

he is at this time transporting large armies of foreign mercenaries, to compleat the works of death, desolation & tyranny, already begun with circumstances of cruelty & perfidy *scarcely paralleled in the most barbarous ages and totally* unworthy the head of a civilized nation.

he has *excited domestic insurrection amongst us and has* endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, & conditions ~~of existence~~.

~~he has incited treasonable insurrections of our fellow citizens, with the allurements of forfeiture & confiscation of our property~~.

he has constrained *our fellow citizens* ~~others,~~ taken captive on the high seas, to bear arms against their country, to become the executioners of their friends & brethren, or to fall themselves by their hands.

~~he* has waged cruel war against human nature itself, violating it's most sacred rights of life & liberty in the persons of a distant people, who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither. this piratical warfare, the opprobrium of *infidel* powers, is the warfare of the *Christian* king of Great Britain. determined to keep open a market where MEN should be bought & sold, he has prostituted his negative for suppressing~~

* Here follows the famous clause intended to destroy the slave traffic (not the whole institution of slavery) from the beginning. Even it was cut out. Jefferson opposed slavery, and was here hoping to lay the foundation for its abolition.

~~every legislative attempt to prohibit or to restrain this execrable commerce: and that this assemblage of horrors might want no fact of distinguished die, he is now exciting those very people to rise in arms among us, and to purchase that liberty of which he has deprived them, by murdering the people upon whom he also obtruded them: thus paying off former crimes committed against the *liberties* of one people, with crimes which he urges them to commit against the *lives* of another.~~

In every stage of these oppressions, we have petitioned for redress in the most humble terms; our repeated petitions have been answered only by repeated injury. a prince whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a *free* people ~~who mean to be free. future ages will scarce believe that the hardiness of one man adventured within the short compass of twelve years only to build a foundation, so broad and undisguised, for tyranny over a people fostered and fixed in principles of freedom.~~

Nor have we been wanting in attentions to our British brethren. we have warned them from time to time of attempts by their legislature to extend ~~a~~ *an unwarrantable* jurisdiction over *us.* ~~these our states~~. we have reminded them of the circumstances of our emigration and settlement here, ~~no one of which could warrant so strange a pretension: that these were affected at the expence of our own blood and treasure, unassisted by the wealth or the strength of Great Britain: that in constituting indeed our several forms of government, we had adopted one common king, thereby laying a foundation for perpetual league and amity with them: but that submission to their parliament was no part of our constitution, nor ever in idea, if history may be credited~~: ~~and~~ we *have* appealed to their native justice & magnanimity, ~~as well as~~ ~~to~~ *and we have conjured them by* the types of our common kindred, to disavow these usurpations, which ~~were likely to~~ *would inevitably* interrupt our connection *s* & correspondence. they too have been deaf to the voice of justice and of consanguinity*; ~~and when occasions have been given them, by the regular course of their laws, of removing from their councils the disturbers of our~~

* The text in the corrected *Journal* reads "and consanguinity."

~~harmony, they have by their free election re-established them in power. at this very time too, they are permitting their chief magistrate to send over not only soldiers of our common blood, but Scotch and foreign mercenaries to invade and destroy us. these facts have given the last stab to agonizing affections; and manly spirit bids us to renounce forever these unfeeling brethren.~~ we must *therefore* ~~endeavor to forget our former love for them, and to hold them as we hold the rest of mankind, enemies in war, in peace friends. we might have been a free & a great people together; but a communication of grandeur and of freedom, it seems, is below their dignity. be it so, since they will have it. the road to happiness and to glory is open to us too; we will climb it apart from them, and~~ acquiesce in the necessity which denounces our ~~eternal~~ separation *and hold them, as we hold the rest of mankind, enemies in war, in peace friends.*!

We therefore the Representatives of the United states of America *appealing to the supreme judge of the world for the rectitude of our intentions* in General Congress assembled, do, in the name & by authority of the good people of these *colonies, solemnly publish and declare, that these united* ~~states, reject and renounce all allegiance and subjection to the kings of Great Britain, & all others who may hereafter claim by, through, or under them; we utterly dissolve~~ *colonies are and of right ought to be free and independant states; that they are absolved from all allegiance to the British Crown, and that* all political connection ~~which may heretofore have subsisted~~ between ~~us~~ *them* and the *state* ~~parliament or people~~ * of Great Britain *is & ought to be totally dissolved;* ~~; and finally we do assert these * colonies to be free and independant states,~~ & that as free & independant states, they have full power to levy war, conclude peace, contract alliances, establish commerce, & to do all other acts and things which independant states may of right do. *with a firm reliance on the protection of divine providence,* And for the support of this declaration, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

* In the beginning, with other documents, and in drafts of this Declaration, the Parliament of England was often mentioned. Finally we note all references to Parliament, or representative government, are omitted.

17

THE CRITICAL PERIOD—FOR WHOM?

Articles of Confederation—
Our First Written Constitution

Following the Declaration of Independence, Congress drafted in 1777 the Articles of Confederation* and adopted them in 1781. Under the Articles the Congress proceeded to appoint presidents† with limited powers, and to send and receive ministers.‡

In other words, before we had our *present* written Constitution, we had *a* written constitution, the Articles of Confederation. Thus we have always had the outward forms of constitutional government; the people were always in a position to get control of the government if they had known what to do, and had taken the trouble to do it.

When the Revolution started, the colonists began to organize actual government under English constitutional principles, minus the trappings of nobility and royalty. It was nothing more than a group of youngsters going into business for themselves. They had won a substantial stake in the land; they had a going business.

In 1775, one year *before* the Declaration of Independence,

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* Original printing in the *Journals of Continental Congress.* Library of Congress Edition, Vol. XIX, p. 214. Also in *Formation of the Union* (House Document 398, 60th Congress), p. 27, reproduced on page 222 of this book.

† S. M. Smith in his *John Hanson, Our First President,* argues that Hanson, not Washington, was the first President of the United States. However, Dr. E. C. Burnett, an authority on colonial and early American history, shows that Hanson (as well as Huntington and McKean) was President *in Congress assembled,* and hence without the powers of the President under our Constitution.

See also *Journals of Continental Congress,* beginning with the year 1781.

‡ *Journals of Continental Congress,* Vol. XXI, p. 1145.

and six years before the Articles were adopted, the colonists created a Post Office Department. Benjamin Franklin had just been purged as Royal Deputy Postmaster General, and was offered the new American job of Postmaster General, but he did not accept. So another was appointed, and the department went into operation.

Other administrations were definitely created, which by the adoption of the Articles in 1781 became legally and constitutionally accepted executive departments as of today. They were the Department of War, Department of Foreign Affairs, and Department of Finance (known first as "Treasury Administration," in which Robert Morris accepted the position of Superintendant of Finance.) The Post Office was merely improved.

More, these departments went over into the second written constitution, adopted in 1789, although there were statutory re-enactments for them. General Henry Knox, Secretary of War, took over the same department under the new constitution; John Jay, Secretary of Foreign Affairs, did the same.

Indeed, during the period of Revolution and the first written constitution, our country not only had a semblance of government, but *actual continuous constitutional government.*

This is important, because many people—including historians, teachers of law and justices of the Supreme Court (in decisions dealing with constitutional law)—practically ignore that period. They simply skip the fact that there ever was any constitution or government, written or unwritten, other than the one blacked in on parchment at Philadelphia in 1787, by the "Founding Fathers."

Besides waging of war and organizing government, the Congress of the United States, under the first written constitution or Articles, achieved many things. It handled numerous foreign problems well. Above all, it established the right of the people to use the land.

The organization of the Northwest Territory, with its settlement of people, expeditions and Indian wars, was an exceptional achievement. The organization was based on the writing of the Northwest Ordinance. Its provisions, followed by statutes, for the distribution of land were practical. Its expression of human rights, its summation of the theory of Anglo-Saxon constitutionalism, its devotion to free religion and education, were spiritually sublime. It was in some respects a better expression of human rights than the words contained in the Constitution and the Bill of Rights.

The Northwest Ordinance is surely a part of our constitution, unwritten or written, living or paper. The Supreme Court afterwards frequently reviewed the Ordinance and definitely recognized it as a part of our constitutional system. In the Dred Scott decision, the Supreme Court differentiated between the Northwest Territory and the Louisiana Purchase, it specifically recognized constitutional validities adopted under the Articles of Confederation with respect to the Northwest Territory, while it did not recognize validities of Congressional legislation enacted with respect to the Louisiana Purchase under our present Constitution.

Not only is the importance of the Articles of Confederation frequently ignored. There are also misconceptions of the economic and financial conditions out of which they sprang. One of these is that it was a desperately "critical period."

It is true that moneylenders were having a critical time and that the country was flooded with paper money. Washington bitterly complained that a traveler had to carry scales to weigh his money, or run the risk of being gypped (the word is mine, not George's).

States really regarded themselves as independent nations, and so acted. They set up tariff barriers against each other. Virginia and Maryland had a row over the Potomac, like those of feudal principalities on European rivers after the fall of the Roman

Empire. Soon these two states, plus Pennsylvania, were squabbling over tariff barriers and trade restrictions. The row spread over the colonies.

George Washington was worried and disgusted. He said that if there were no change in the system, it meant the "downfall of the nation." Alexander Hamilton, too, pointed out numerous faults in the Articles of Confederation—their failure to grant sufficient power, and their failure to provide for military protection and taxation.

And since he looms so big in American history, let us digress for a minute or two and talk of this remarkable man and character. Today he is accepted as authoritative on national finance, our constitutional history, and on the life and times he represented. He was only seventeen with but two years' residence in America (he came from the West Indies), when he began writing and fighting for the Revolution (1774). At twenty he was a colonel on Washington's staff. He was a brilliant soldier and commander in the field by the time he was twenty-one. At twenty-three he married into the powerful and rich Schuyler family.

He wrote more than half of the *Federalist,* a series of articles concerning the adoption of the Constitution. They were comprehensive and well done. He became the first Secretary of the Treasury under the new Constitution; he became one of the great lawyers of the time. It is because of his exceptionally brilliant mind, his comprehensive, self-acquired learning, and his widely varied experiences, that he is frequently cited as authoritative by scholars, historians, and the justices of the Supreme Court.

He was, however, an opponent of democracy, and would have preferred monarchical and aristocratic rule. He believed in government by the "rich and well-born"; in a strong, military, coercive, centralized government, without states, and with many officials holding office for life.

For a century and a half conservatives have regarded him as

their High Priest. Yet now that the people find it expedient to vest more authority in their federal government—a development in accord with Hamilton's theories—the conservatives are outraged. Outraged because their influence over the federal government has been somewhat diminished. So the conservatives have now abandoned Hamilton and centralization for Jefferson and "state's rights."

At the time the Articles were adopted, however, Alexander Hamilton and his class were talking much of the terrible times and the so-called "critical period." It was critical all right.

But the question is, for whom?

For the farmers? The small businessmen? The average workers?

The answer is that it was not so critical for them; in fact, many of them were fairly prosperous. But it was critical for the "rich and well-born"—Hamilton's class; it was critical for the moneylenders, the big businessmen, the great plantation owners, the shippers, factory owners, and interstate industrialists.

I am not trying to prove that a new and more centralized government was not necessary, because it was. I believe it obvious that the independent military establishments and economic units calling themselves states sooner or later would either have fallen into the hands of Europe, or have destroyed one another. It is quite true that a general government with more power was necessary to preserve the union and national life.

No one need lose any sleep over the sad plight of the "common" people, however, under the First Constitution or Articles. They were, comparatively speaking, since the country was agrarian, with employment or lands for all, better off than millions in our country today. It was the moneylending and conservative classes who really wanted the new constitution. Since it was not an industrial age, the people could wangle along on the land itself, but the conservative classes wanted

courts for the collection of their debts, a strong military government for public order, and an integrated economic system in which they could carry on business and make profits.

Let us look into the calling of the convention for the new constitution.

18

FOUNDING FATHERS AND THE "COMMERCIAL INTERESTS"

Constitutional Convention, Philadelphia, 1787

State rivalries and jealousies, we have seen, were causing confusion. During the Revolution the people had been too busy fighting the common enemy and the home-town Tories to fight each other. The force of events had been building a single unwritten constitution and a spirit of unity.

But after the colonies had adopted the Articles of Confederation and had been recognized by England as The United States of America, the states became interested in their separate freedoms. The loose nature of the Articles reflected this tendency and unfortunately tended to increase it and to further interstate jealousies. Tom Paine's ideal of a single American Magna Carta was breaking down.

Concerning this situation, Senator Albert J. Beveridge, in his admirable *Life of John Marshall,* says:

> It was the States which always were thwarting every plan for the general welfare; the States which were forever impairing the National obligations; the States which bound hand and foot the straw man of the central power, clothed it in rags and made it a mere scarecrow of government.
>
> And it was State pride, prejudice, and ignorance which gave provincial demagogues their advantage and opportunity.
>
> The State Governments were the "people's" Government; to yield State "sovereignty" was to yield the "people's" power over their own affairs, shouted the

man who wished to win local prominence, power, and office.

The government was in many respects ineffective. It was without sufficient power to tax, spend, or provide for the common defense and the general welfare—powers essential to any government. Therefore, it was natural that agitation for a convention to adopt a new constitution providing for a powerful central government should arise.

It should constantly be emphasized that the agitators for a Constitution were *conservative* businessmen bent upon protecting their interests, or liberties. They were not in the least interested in writing a Constitution for the protection of the liberties of the people. The important thing, said George Washington afterward in presenting the Constitution, was "consolidation of our union. . . . Individuals entering into society, must give up a share of liberty to preserve the rest." He specifically observed that the Constitution concerned war, money, commerce, and effective "general government of the Union."

The statement that the promoters of the new Constitution were not interested in liberty is not merely a personal opinion; it is a historical fact recognized by all the authorities. For example, "Commissioners" to the constitutional convention were appointed, not elected, by Virginia, Delaware, Pennsylvania, New Jersey and New York. They met at Annapolis, Maryland,* with the intention of establishing voluntary trade pacts between states. The small attendance, the failure of previous state pacts made apparent the futility of trying to cook up voluntary agreements on trade and commerce. So they took up the idea of calling a constitutional convention for all the states. (One of the principal advocates was Alexander Hamil-

*Strangely enough, Maryland did not send any representative, and gave those assembled no information or reason. Neither did Connecticut, Georgia, and South Carolina. Appointments were made by the states of New Hampshire, Massachusetts, Rhode Island and North Carolina, but nobody showed up.

ton.) The delegates very well knew that nothing of substantial value could be accomplished by a few wrangling states—that general unity of all the people was necessary.

The commissioners held that a "uniform system in their commercial intercourse" was necessary for the "common interest and permanent harmony." To achieve such, they realized that they would have to hold a general meeting of *all* the states. New Jersey wanted to extend the scope of the meeting to *all* necessities; the commissioners concurred and added that the situation "may require a correspondent adjustment of other parts of the Federal system." *

They ended by an appeal for "united virtue and wisdom." A small, determined, shrewd group of business leaders and their representatives issued the call for the Constitutional Convention. The people in general knew practically nothing about it. It is also well to bear in mind that the call was not for a new constitution, but for a revision of the old.

The State of Virginia acted first (October 16, 1786). The Virginia resolution asserted that the commissioners had assembled at Annapolis for the "purpose of devising and reporting the means of enabling Congress *to provide effectually for the Commercial Interests of the United States* [and they] have represented the necessity of extending the *revision of the foederal System* to all its defects. . . ." †

The resolution proceeds to set forth persuasively, and I think dramatically, the "actual situation,"—a crisis which had to be met by the "good People of America." The people were called upon not to renounce what they had gained through common blood—"the auspicious blessings prepared for them by the Revolution."

The resolution calls specifically for such "further concessions and Provisions as may be necessary to secure the great Objects

* *Journals of Continental Congress,* Vol. XXXI, pp. 677 to 680, letter of John Dickinson.

† Italics mine, except *the United States.* See *Formation of the Union,* p. 68.

for which that government was instituted and to render the *United States* as happy in peace as they have been in war." It concluded by calling for *alterations* in the existing "foederal constitution."

Virginia acted ahead of the Continental Congress, and without its authority. The Congress itself did not issue the call for a constitutional convention until February 21, 1787 when the Annapolis meeting was considered.* The resolution of the Continental Congress stated that it entirely concurred with the views of the commissioners who met at Annapolis "as to the inefficiency of the Federal Government and the necessity of devising such farther provisions as shall render the same adequate to the exigencies of the Union."

The Congress followed up the resolution by adopting a detailed motion proposing:

1. To establish "in these states a firm national government."
2. To meet in Philadelphia "for *the sole and express purpose of revising* the Articles of Confederation and reporting to Congress and the several legislatures such *alterations* and provisions therein as shall when agreed to in Congress and confirmed by the states render the *federal constitution* adequate to the exigencies of Government & the preservation of the Union."

The Convention met in Philadelphia as had the first Continental Congress. But the temper of the delegates to these two historic assemblies was different. The gentlemen of the Convention were, on the whole, much more conservative, though some of the very same men had been delegates to the Congress. Their job was no longer revolution, but the business of estab-

* *Journals of Continental Congress,* Vol. XXXII, p. 71. *Formation of the Union,* p. 44.

lishing a well-organized government. Senator Beveridge, in his *Life of John Marshall,* says: "Finance, commerce and business assembled the historic Philadelphia Convention," but hurriedly adds, "although it must be said that statesmanship guided its turbulent councils."

The men who assembled were men of *property.* To express it quite ungallantly, their class (and some of them) "made money out of it." I am not accusing our very worthy Founding Fathers of being professional lobbyists, or of lacking a high order of patriotism. They were primarily businessmen with business interests uppermost in their thoughts. They took steps to improve business and their own fortunes as well.

Charles A. Beard, in his *Economic Interpretation of the Constitution,* has assembled abundant evidence from the backgrounds and general viewpoints of the delegates. All of the documents, the public and private correspondence, and the newspaper stories of the time, conclusively demonstrate that the delegates' primary purposes were to improve business and commerce and to set up a strong central government. They did not gather in Philadelphia to ensure civil liberties to the people.

Before we move on, we should remember that the delegates had no authority whatever to throw out the Articles of Confederation; they had merely the power of *revision.* As everyone knows, they threw the Articles out anyhow and did a clean new job, though in violation of the official call and the existing constitution—nothing more nor less than "an act of revolution," * says one historian.

*Edwin S. Corwin, *The Constitution and What It Means Today.*

19

A BUSINESS DOCUMENT IS COMPLETED

"This" Constitution, Signed at Philadelphia, 1787

The Constitutional Convention met in 1787.

It was nearly fifteen years after the real bloodshed of the Revolution had begun. It was some half century after the real concept of American liberty had crystallized, and the practical application of the British constitution had begun to break down, preparing the way for a separate American Constitution.

The American people were exercising independent rights and liberties long before the delegates assembled. What the gentlemen of the Convention wanted to do, and did, was definitely to put on paper a mechanical frame, form, or set-up of government endowed with certain large powers. They set up the legislative, executive, and judicial branches of government, prescribed terms of office, made subsidiary provisions of various kinds, prohibited ex post facto laws, mentioned liberty in the preamble, provided that no man should be deprived of a jury trial and the writ of habeas corpus by the federal government, added a few other clauses, and called it a day.

The delegates, quite naturally, met not to protect the liberties of the people, but to protect property rights—to protect their own liberties.

Alexander Hamilton said it was not necessary to provide for the liberties of the common people since they had been universally accepted and agreed to. With James Madison he said the enumeration of a few liberties would probably be interpreted as abrogating those inherited liberties not mentioned. These opinions were offered toward the close of the Constitutional Convention and were printed in the newspapers. But

the debates reveal that little was said about broad democratic liberties. In fact, Madison's *Debates of the Convention* show that many of the delegates feared and distrusted the democratic process.

When the people realized there was no Bill of Rights in the new Constitution, they sent up a gigantic roar of protest all over the country. "Shays' Rebellion," led by a patriot captain of the Revolution, had caused widespread fear. George Washington was in a sweat over it. The people in general had been "acting up" under their newly won independence of England.

The people began to see that the new Constitution had been written *for* property by men *of* property. Some of them discovered that among its promoters were the London merchants who wanted to collect their debts and get back their trade; other supporters had been either real or suspected Tories during the Revolution.

The conservative promoters of the new Constitution began to fear public indignation would defeat it. Their accomplishment, rather than being "an act of revolution," as Corwin calls it, was an act of counter-revolution. And now this minority had to put their new Constitution over, and make it effective. What should they do?

Promise something!

So they liberally promised a Bill of Rights. Let the people talk, and write! Property interests were protected, there was to be a strong central government with an army, and therefore no more Shays' rebellions. Sure, let them talk. So four years after the signing of the Constitution (1787), a Bill of Rights was adopted (1791), which we shall talk about in the next chapter.

Ever since the Constitution was adopted, the powers-that-be have been bent upon establishing far and wide the notion that there is but one American constitution—*the* Constitution. They have done a good job. A very large proportion of the people today believe that it is our *only* constitution. Either they do not

know or they forget the whole history of our constitutionalism which has been built up through the centuries. Besides, as we have seen, the Constitution of 1787 was the *second* written constitution, or frame of government.

Had it been called the Great Compact of America, the Magna Carta, the American Ordinance, or some similar name, the rigidity, uniqueness, soleness, of The Constitution might not have become so deeply implanted in our thinking. But from the very beginning, the insiders, the lawyers, the judges, and the property interests, backed by all conservative groups, built it up as a symbol of our whole constitution and at the same time developed it through the contract clauses and property-saving provisions as a rigid instrument for their own uses, as had been originally intended.

We should notice that nowhere in the Constitution is it referred to as *"The* Constitution." It is always referred to as *"this* Constitution," meaning, of course, this *particular* frame or set-up of government. Certainly there was no implication that the accumulated rights and liberties of the centuries were thereby wiped out, or that the people were to be deprived of a fair stake in the land and its resources.

I am not here attempting to tell the whole story. I am mentioning only some facts which are generally overlooked.

Not only have the conservatives made The Constitution a symbol, they have attempted to convince the people that the Supreme Court is the single guardian of *their* constitutional liberties. Various plans of government submitted at the Constitutional Convention called for "supreme legislative, executive, and judicial branches." * For instance, the plan offered by Alexander Hamilton proposes (read slowly): "The Supreme Legislative Power, . . ." then next, "The supreme Executive authority," and last, "The supreme Judicial authority." †

*Read the different plans presented at the convention in *Formation of the Union,* especially Hamilton's, pp. 979-984; and Read's, pp. 985-988.

†Note that *Supreme* is capitalized in *The Legislative Power* only. Note also that the word *Power* is used with *Legislative;* the word *Authority* with *Executive* and *Judicial.*

The word *supreme* meant simply the national, or highest of its kind. *It does not now and never did indicate supremacy over another branch.*

But when the Constitution was finally drafted, *Congress* was used instead of *legislature,* and therefore *supreme* was not necessary to designate it; *President* (suggested by *the President in Congress assembled* provided for in the Articles) was used instead of *Governor,* or *Executive,* and of course the *supreme* was again unnecessary. When the delegates came to the court, however, the word *supreme* was used, but only to designate it as the *high,* or *national* court.

The Constitution has *supreme Court* throughout; *supreme* is nowhere capitalized. You can ask ten of your friends to capitalize *supreme court* as it is capitalized in the Constitution (try your lawyer, too), and nine of them will capitalize both—*Supreme Court.* Even if you tell them one of the words should not be capitalized, they will write it out with a large *S* and a small *c.*

Although this point may not be of very great importance, it nevertheless reveals that the name of the high court is frequently taken to mean that the judicial is supreme over the other branches of government, and even over the will of the people of the United States.

Of course, everyone knows that the Supreme Court exercises the power to declare acts of Congress unconstitutional, although no such power is granted in the Constitution. This I will discuss fully in later chapters, but it is well to remember that no such power was given in the written Constitution; whatever power exists is an *unwritten* power.

If there are unwritten powers for the judges, there ought to be unwritten powers for the people. Therefore:

> *The particular constitution adopted at Philadelphia is not the sole constitution of our American liberties. It is not in itself the Living Constitution, but only a part of it.*

No set of men ever wrote the constitution of a living government.

In spite of all this, no one can deny that the framers of The Constitution did an excellent job. It is still a great Constitution, a great framework of government.

By setting up the three branches of government, they ended the uncertainty, the looseness, and set up a government with limited powers and with definite duties. That one branch or the other has transcended its limitations or has usurped powers is no reflection on that Constitution.

I have already analyzed, in the first chapter, the Preamble. The Preamble in itself is a good job. It is short. Included in the Preamble, you remember, is a statement of the purpose of government—General Welfare. But it is important to know that the general welfare is also a *specific* power and duty of government, as you will see in the General Welfare Clause out of Article I, Section 8, first paragraph:

> Article I, Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common defence and general Welfare of the United States; * * *

And in the last paragraph of the same Section there is an enabling clause:

> To make all Laws which shall be necessary and proper for the carrying into execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Our *form* of government provided in the Constitution, of which the Bill of Rights is a part, is sufficient if the people exercise their rights and duties. Under it, a decent economic

system is possible; indeed, the American people are satisfied as to *form,* but they also want the *substance* of a living government.

Although the Bill of Rights is merely a part of our Constitution, let us look at it alone.

20

DOES THE CONSTITUTION PROTECT FREEDOM IN AMERICA?

THE BILL OF RIGHTS, 1791

> *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.* First Amendment to the Constitution. (For entire Bill of Rights, see page 265.)

Now——

At the very outset we must understand *that the Bill of Rights does not protect the American citizen from infringement by states or their subdivisions.** The Supreme Court early decided, in the case of Barron *vs.* Baltimore,† that the protection of liberties would not be afforded as against states. Chief Justice John Marshall said in that case, "Each state established a Constitution for itself, and in that Constitution, provided such limitations and restriction on the powers of its particular government as its judgment dictated."

Right of trial by jury, and the various other rights are therefore *not* protected under the Bill of Rights as to actions against citizens by states. Thus if a state deprived a person of his

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* Certain rights which happen to be in the Bill of Rights have been recently written into the Constitution by the Supreme Court. But it was not done through the Bill of Rights, but the Fourteenth Amendment, which will be covered later. It is important to keep in mind that the Bill of Rights is only to protect citizens as against the *federal* government, and not the states or their subdivisions.

† 7 Pet. 243, 1833.

rights under the Bill of Rights, he could get no relief by appeal to the federal Courts. In fact, he probably could not even get into a federal Court.

The federal government does not protect even the freedom of religion from invasion by a state or a subdivision of a state.* The states can infringe upon such rights if they so desire. The Supreme Court has held that, "Neither the original Constitution nor this amendment [the First] makes any provisions for protecting the citizens of the respective states in their religious liberties. . . ." †

Since the matter just quoted is *still the law,* the historical facts are worth inspection. State churches existed long after the adoption of the Constitution.‡ In fact, in several states which had state churches § devotees of certain religions not favored by the state were treated with great severity. These state churches existed until 1817 in New Hampshire, 1818 in Connecticut, and 1833 in Massachusetts—twenty-eight, twenty-nine, and forty-four years, respectively, after the adoption of the Constitution.

All this is important because the religious liberty of these states was based on certain "established" vested rights. Congregational ministers and their flocks had been revolutionists. So, when independence came, they demanded liberty—for themselves—as the state church. On the other hand, in Virginia the Episcopal ministry had been for the most part Tory. The people of Virginia consequently achieved separation of church and state (just before the federal Constitution was adopted).

In neither instance did the federal government have any say. And even today, by holdings of the High Court still in effect, any state *could* establish a state church and levy taxes for its

* In 1934, in Hamilton *vs.* California, 293 U. S. 245, there was an *implication* that religious liberty is protected against state encroachment. That, however, is all.

† Permoli *vs.* New Orleans 3 How. 589,609 (1845).

‡ Corwin, *The Constitution and What It Means Today.*

§ Bryce, *American Commonwealth.*

support. There is danger in this situation because if economic conditions should become worse, there will be the inevitable attempts to make religious and other minorities the scapegoats. In some states, the persecution may become "official" and "legal" in the form of a *state church* supported by taxation upon all citizens.

In speaking to hundreds of audiences over the country, I have become convinced that nearly 100 per cent of the people honestly believe that *all their rights* are protected from invasion from *any part* of the government, national or state, by appeal to the Supreme Court. This is *not* true, and we should keep that in mind.

Let us consider the Bill of Rights.

It was certainly no Table of Liberty graciously handed down by the Founding Fathers. As we have seen, the people had to put on heavy pressure to get it—the only thing they did get other than an implied confirmation of the liberties which they already enjoyed. And the Bill of Rights was actually no more than a written guarantee of some of those Anglo-American liberties.

It is quite true that the people feared the new *federal* government—feared that it would become too centralized and powerful. That is the reason that the Bill of Rights was applicable solely to Federal agencies.

Historically, however, liberty of speech and press was founded upon the abandonment of the censorship and printer's license laws of England. But the American people had just gone through a revolution, and the ordinary plowmen and villagers as well as intellectuals like Jefferson, did not want to exchange old tyranny for new. They wanted *practical* freedom, not theoretical constitutional rights. They wanted both land and liberty. As Mr. Justice Brandeis said in Whitney *vs.* the People of California (1927), "Those who won our independence by revolution were not cowards. They did not fear

political change. They did not exalt order at the cost of liberty." *

Those of our ancestors who were really the revolutionists wanted the utmost liberty of speech and press. Such liberty meant then, and means now, that one can advocate anything † —whether reactionary, radical, or merely crackpot—a king, Coxey's Army, Wall Street government, communism, fascism, or the repeal of liberty itself. It is clear that the framers of the Bill wanted no revolutions in the future. They knew that citizens of a democracy with complete freedom to agitate for political change, and above all with true economic opportunity, have no cause to revolt. So the authors of the Bill of Rights placed *on paper* no limits on these basic human motives—no *federal* government limits, that is. But, insofar as the Bill of Rights of the federal Constitution is concerned, a state could deprive a citizen of his liberties, and can now.

So, to say that the Bill of Rights "incorporated and preserved the inherited liberties of the centuries," is, from a practical viewpoint, more oratory than truth. At the time of the adoption of our Bill of Rights, Britain had *one government,* and neither the City of London, nor Glasgow, nor any subdivision of Great Britain could deprive a citizen of his constitutional rights. But in our dual system of government, with national and state sovereignty, the national government guaranteed liberty under the federal Constitution against invasion by the federal government only, while a state might violate its citizens' liberty at will.

If we call ourselves a democracy, we cannot permit a citizen to be persecuted by any one of the governments, state or national. We shall see that in 1886 under the Fourteenth Amendment the Supreme Court, by declaring state laws regulating corporations and monopolies unconstitutional, acted to

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* 274 NS 347, 47 Sup. Ct. 641.

† Subject, of course, to the laws of libel, slander, obscene utterance, incitement to violence and treason.

protect the liberties of big business as against states; but it did not at the same time act to protect the *civil* liberties of American citizens as against states.

In all ages government has acted in the last analysis as the agent or instrument of economic power—of those who owned the land. It is idle to talk of human rights as separate from economic rights. Throughout history idealists have fought—with arms and with ballots—for human rights. But the people have won and retained their rights—their civil liberties—only when they have won some measure of economic power, and consequently some voice in their governments.

It is principally in the last five or ten years that the Supreme Court has begun to recognize the civil liberties of the people, and the extensions have been significant. These have followed extensive economic (wages, employment, prices, working conditions, housing, and the like) and political gains made by the people through their labor, farmer, small-business, and unemployed organizations. But we shall consider the whole matter more fully in a later chapter ("Civil Liberties Today").

Let us get back to the time of the ratification of the Bill of Rights, to the young nation. The War of 1812 has not yet been fought; let's fight it, push back the Indians, gobble up half of Mexico, and then wade through our own blood in the Civil War.

The sun of the nineteenth century is rising. It is 1800, and we still have only the territory of the thirteen little British Colonies that became the United States of America. But soon we will hear the beating, then the roar, of the drums of empire.

21

THE MARCH OF EMPIRE

American Development, 1800 to 1860

After the Bill of Rights was adopted, the new nation put off its swaddling clothes, forgot the formal Constitution awhile, and went to work. The people grew up in the land, then swaggered a little. Their merchantmen, whalers, and slavers sailed the Seven Seas.

There was the War of 1812, in which some of our ancestors broke the record of the Persians at Marathon, and let the British burn the national Capitol, over which we need not weep, for we have let the lobbyists burn it down several times since. However, our forefathers won Indian wars. They had the powder, the iron, the will; and they wanted the land of the Indians. The eleventh (1798) and twelfth (1804) amendments to the Constitution were adopted—one that a state could not be sued, and the other changing the manner of electing Presidents.

As the century progressed, there were a prodigious number of "constitutional debates." Webster, Hayne, Clay and Calhoun voiced sharpening rivalries and conflicts which were soon to flare into civil war.

But dominating all other national developments was an expansion unparalleled in history. There were big families, plenty for everybody to do, giant forests to cut down, seemingly endless lands to till, ship-loads of immigrants coming in to work and to raise the price of land.

The first territorial expansion was the Louisiana Purchase. Thomas Jefferson, even before he began dickering with Napoleon for these vast millions of acres of rich lands and waters, regarded purchase on any terms as strictly unconstitutional. He suggested a constitutional amendment.

But when Jefferson saw a chance to buy the land for a song, he snapped it up, decided to let Congress find the money later, and to talk about the Constitution when the land was safely a part of the United States of America. If he had taken time to get an amendment, the country would probably never have gotten the land.

The purchase may have been "unconstitutional," since territorial acquisitions are not provided for in the Constitution. But it was a good and honest buy, and nearly everybody except Eastern Federalists wanted the land and the Mississippi Valley and more western states. So the people, not in black robes, but in hickory shirts and buckskin britches, at once rendered a unanimous decision that it was constitutional, and began pouring into the new land. Some of the Tories denounced Jefferson as an Emperor and a violator of the Constitution, but it was too late. The people had the land and were living on it.

Jefferson's purchase was great statesmanship. No amendment was ever passed for its purchase. In fact, the acquisition set a constitutional precedent for future acquisitions. Soon after it was Florida, obtained from Spain.

In the 1820's adventurous men and women emigrated to the great land of Texas, then a part of the United States of Mexico. By 1836, they had revolted against Mexico, written a stirring Declaration of Independence, adopted a national constitution, and set up the Republic of Texas. Then the Republic, after nine years of independence, became a part of the Union in 1846, merging its constitutionalism with that of the United States of America.

The people wanted still more land. A border incident was cooked up by American federal authorities down in Texas. Our national honor was sullied by the United States of Mexico; our military columns marched; and not long after our banners fluttered, and the eagles of our empire screamed from the heights of Chapultepec. We soothed the sting of the "insult"

by taking another huge block of western territory including California.

In 1846, after the turbulent political battle over "54-40 or Fight," we settled (with England) the Oregon boundary at the 49th parallel instead of 54-40.

In 1853, some railroad speculators wanted land for railroads; the United States government obliged by slicing from Mexico some more territory—what is now the southern extremity of New Mexico and Arizona. This was the Gadsden Purchase.

In the meantime, gold had been discovered in California. From 1849, straight across the prairies, forest and deserts of the continent, men and women, men and women, children and children, each day plodded on toward the setting sun.

It was the turbulent march of empire. Troops, harlots, sainted women, whiskey merchants, Indian traders, gamblers, doctors, farmers, raced on to the cries of Land! Land! Gold! Gold! They staked out claims, built cities, became independent and self-reliant, for the people had the fertile earth, the rich veins of ore. They wasted much, but in the abundance of land there was enough for all.

Thus the little agricultural nation of some 892,000 square miles in 1790 had expanded to one of 3,027,000 square miles by 1860. The population of the United States at the time of the Revolution was somewhere near 3,000,000 people; by the beginning of the Civil War, it was 31,000,000.

The American people had covered a continent—they had reached the shores of the Pacific—a continent visioned by Tom Paine. Here was our continental United States of America. And now over it, like the other lands acquired, spread the Constitution of the American people.

Throughout this hectic half-century, however, overtones of a fundamental discord kept rising above the clamor and excitement of the western trek—the slavery debates. Fighting forests and Indians in the heat and sun and cold and rain, pioneers who

went West generally carried with them a hatred of slavery. Nearly all were poor whites (not "poor whites"), whether they came from the North, the South, or from Europe beyond the seas. By the 1850's, it seemed that the nation was not destined for peace. Already it was shaken with the tremors of a bitter internal war. What finally brought this catastrophe?

22

OLD MEN WRITE IN INK, YOUNG MEN IN BLOOD

The Dred Scott Decision

Ink.

An old thin hand, bony and parchment-like, had written long days and nights on foolscap paper. It was the hand of Mr. Chief Justice Taney of the Supreme Court of the United States.

And it put the fool's cap of death, and sorrow, and hardship upon millions of Americans.

How?

By the use of one word.

Unconstitutional.

The High Court had assumed a monopoly of interpreting the Constitution, and had exercised it.

A law of the people of the United States, enacted through their legally, constitutionally elected representatives, and one which did not interfere with the affairs of any state, in any way whatever, was declared to be no law at all. The law declared unconstitutional was the Missouri Compromise, enacted nearly forty years before. In this compromise Congress had made no effort to restrict slavery in the South. Congress only sought to bar it from the territories, where it would have meant complete economic ruin for the white farmers and workers.

Dred Scott, a black slave, was taken on two occasions by his master up into the territories, once into a part of the original Northwest Territory, and once into what had been part of the Louisiana Purchase—all free territory. Then Dred was taken back to Missouri, a slave state. Claiming freedom by his sojourn in free territories, he sued. But the Missouri State Supreme Court held that he was a slave.

His case was then taken into a federal district court. The

court decided against Dred Scott. Dred appealed to the Supreme Court of the United States. The judges in conference first decided to side-step the hot issue. But politics intervened and they then decided to deal with the slavery issue involved in the case.

All seven judges wrote long, tiresome, laborious decisions. They were moral (or immoral) lectures. Using as authority Chief Justice Marshall's assertion that the Court had a right to declare a law unconstitutional, the Court went far beyond anything dreamed of by Marshall.

The merits of the case are not now important. What is important is that the decision established the idea—wholly false—that the Court could hold *anything* unconstitutional for *any reason* suitable to the Court, whether warranted by the express words of the Constitution or not. From the Dred Scott decision sprang the notion, still prevalent, that the Supreme Court is the *highest* of the three branches of government, although the Constitution established the three branches as co-ordinate.

Presumptuous and extravagantly despotic, the Court proclaimed, in effect, not only supremacy over the other two branches of government, *but superiority over the will of the people.* In magnanimous language the Court announced that questions of "peace and harmony of the country required a settlement of them by judicial decision."

The implication was clear. A handful of judges, favorable to the large plantation-owners and having lifetime jobs with no responsibility to the people, were telling the world that they could direct the economic, social, racial, agricultural, business, and political forces involving millions and millions of people. More, they would tell millions unborn what they must do for centuries to come!

It was this case, then, that really made of the Supreme Court a super-legislature without responsi-

bility—one above the constitutionally elected legislature of the people.

Justice Taney wrote pages to show that the Negroes were a degraded race. He ruled that Negroes had been regarded as so inferior that they had *"no rights which the white man was bound to respect."* In spite of all the *if*'s, *and*'s, and *but*'s, this was at least the upshot. He held that Negroes could not become citizens of the United States, not even in free states in which there were many Negro children of free-born parents—and not even though Negroes had served in the American Revolution, and had had citizenship in some states from the beginning. Why? They would thereby be entitled to "liberty of speech" and that would "inevitably lead to insubordination and discontent" among the slaves.

The slave interests of the South had special reason to be pleased. Congress had forbidden slavery in the Northwest territories. Yet the Court held that Congress had no right to legislate for and govern the territories according to its own judgment, though the Constitution expressly gave Congress "Power to dispose of and make all needful Rules and Regulations respecting the Territory . . . of the United States. . . ." The Court held, in effect, that a white man from the South had as much right to bring slaves into the territories as a white man from the North had to bring in his horses and mules. Strangely enough, the Northwest Territory was excepted because, the Court said, that had been created under the Articles of Confederation, in which the states had agreed to outlaw slavery. They had likewise agreed in the Constitution that Congress had the power to rule the territories. Completely inconsistent, the Court upheld the one and ignored the other.

What did this mean to the poor white man of the North? It meant that if he migrated to the territories, he might be destroyed by the competition of plantation slavery. Everyone

well knew what it had done to the poor white farmers of the South.

The people everywhere were confused over the long laborious decision, and its effects. Even today many of them do not realize the injurious effects. One thing, however, the people understood: *the Supreme Court had blessed slavery and had ordered its extension.*

The Dred Scott decision was a direct blow at the American concept of democratic government. Basic to this concept is the right of the majority of the people, through exercise of legislative controls, to see to it that the Law of the Land is operated for their common good. But should the people ever allow an individual or group, not of their choosing and not subject to their recall, to decide on what matters they may legislate and how—to dictate, that is, how they shall use the soil and regulate their economy, then they have surrendered their basic democratic rights. For vesting of such power in any non-elected body means that it is possible for minority interests to secure for themselves liberties at the expense of the people.

The Supreme Court *may,* upon occasion, become such a body. It did in the Dred Scott Case. And therein lies the significance of that decision. For the idea that the Supreme Court can act thus again persists among groups who fear to lose their monopoly on certain liberties which today the people are demanding be extended to all for the general welfare—electricity; health; housing; the benefits of insurance; a voice in setting wages, prices, and rentals.

The Court had acted in exactly the same manner as the Privy Council of England had when it declared the colonial acts against the slave trade to be null and void. And the justices of the Supreme Court were just as far removed from the people as the Lords of the Privy Council had been, sitting in London beyond the seas, holding their noble jobs for life.

The Dred Scott decision put the North and the West in a rage.

There could be no settlement, no arbitration, no compromise now. The High Court had made it impossible.

Indeed, the writing of this thin old hand of Mr. Chief Justice Taney made war as certain as the death that was creeping upon the old man as he wrote.

So the people got a plantation-grown, judge-made, ready-to-wear strait jacket of war and death. It was always thus. For when old men write in ink, young men write in blood. Once again the people had to fight and die for their liberty.

This is not to say that the Supreme Court judges were responsible in themselves for causing the war. Judge Taney and his confederates were, after all, symbols. They represented the interests of the slave-owning aristocracy of the South. It was this class and their system that stood in fundamental conflict with the manufacturers and farmers of the North and West and their system.

The one required low tariffs for the importation of manufactured goods; the other high tariffs for their protection. The one had no interest in large-scale federal improvements in communication systems and aids to commerce; the other had every interest. The one wanted new territory to replenish soil destroyed by intensive plantation cultivation; the other wanted new territory to build free farms and markets. And, finally, the one required slave labor bound to its master for life; the other required free labor for hire by its master by the day or by the hour.

The war between these systems was inevitable. War is always inevitable when a small group enjoys an irresponsible liberty derived from an unbalanced distribution of land and economic power. Under such circumstances government will tend to serve the narrow interests of that group rather than the broader interests of the people as a whole. At the time of the Civil War the Northern manufacturers and farmers happened to represent these broader interests.

The present plight of the descendants of the men who fought and died would seem to be ironically tragic. The children of those blue-coated farmers live in the bonds of an industrial servitude which fails to provide them with even the security that was assured the Negro slave. The children of the gray-coated five-sixths of the South's population that owned no slaves are outcasts in their own land, peon share-croppers upon an exhausted and barren soil. And the children of the slaves remain an oppressed race, landless and indigent.

Nevertheless the Civil War was a progressive war. The North and West did represent broader interests of the people. And what the Northern interests did with their power—how they enjoyed their liberty, once they had it, is another story.

Out of the Civil War came another constitution—the Confederate. The Southern lawyers set forth upon paper the liberties they held dear. And it is well worth our while to examine them, for today powerful groups would likewise secure their liberties at the expense of the people's. Once again there are in the Supreme Court old men—or men with old and dead ideas—who write in ink.

But let us look at this written Constitution of the Confederate States of America.

23

TWO CONSTITUTIONS DRIP WITH BLOOD

The Confederate Constitution: Born Dead

To war! To war!

Let the bugles cry out! Let the people once again kill each other! Onward, Christian soldiers, marching on to war. Let the men in frock coats write another constitution, a good one, Sir, for the Confederate States of America.

The newly written constitution of the Confederate States of America was good, indeed. In its very preamble it invoked the "favor" of God Almighty for the bloodshed and killing that was already taking place in order that what their ministers of the gospel called the divinely ordained institution of human slavery should not perish from this Earth. They also asked God for "guidance"—but they were careful to omit the General Welfare clause of the United States Constitution.

I do not say this to cast any reflection on the men of the South. They were personally as good, or bad, as the men of the North. But they were writing with a dead hand, trying to perpetuate a system itself long dead. It was dead because it served the interests of but one-sixth of the white population of the South—the one-sixth that owned plantations and slaves. For the rest of the American people—for the other five-sixths of the Southern whites (with a living standard as low as, or lower than, that of the slaves); for the slaves themselves; and for the millions of Northern workers, farmers and merchants —the slave system spelled hopeless poverty. The Confederate Constitution was written not only in the name of God, but in the name of Liberty. Liberty for whom? Liberty for the slave-owners. And (Tragedy of Tragedies!) they got the illiterate

bedeviled "poor whites" of the South to fight for them—for somebody else's liberty and somebody else's slavery.

The newspapers of the day contained demands by the slave-owners that the federal government "let them alone," precisely the demands of great personless industrial corporations today. The demands were, of course, couched in pious language, in the language of liberty, just as they are today.

States' Rights! was the battle-cry. It is still a grand-sounding one, but it meant (and means) that each state was a convenient division for those in power to exploit the people—poor white, or slave black—as they pleased. Hence the plea, States' Rights —not General Welfare.

The Southern leaders had always opposed "internal improvements"—government improvements, that is. Six presidents, five of them Southerners, but all six Democrats, vetoed bills for internal improvements. They were Madison, Monroe, Jackson, Tyler, Polk, and Pierce. The general opinion of the Southern Democrats was that any internal improvements were unconstitutional—they spoke of "concentration of power"—usually "dreadful"—the "destruction of liberty" and the "utter" destruction of state "sovereignty."

This talk of unconstitutionality in relation to internal improvements, however, had back of it the same real reason for the later adoption of the Confederate Constitution—a desire to preserve forever the South's agrarian character, keep intact the big estates, keep down the poor whites, hold the slaves in subjection, and prevent the spread of free industry and commerce.

Let's take a look at this constitution—at two of its important parts. If you want to see it all, turn to page 237, in the Second Book.

Humorously or grimly enough, the South had the blessing of the Supreme Court of the United States in what the Court had ordered to be the Law of the Land—that is, slavery forever and its extension, *whether the representatives of the people wanted to compromise the question or not.* The Supreme Court

forbade compromise, blessed slavery; and the South fought to uphold the Court and the Constitution. The political philosophy of the Confederate Constitution was simply that of the Supreme Court's interpretation of the Constitution of the United States. Therefore, the Southern leaders felt, in many respects rightly, that *they* were not in rebellion. Since nearly all the states of the North and a majority of the people of the North had called for disobedience to the sacred-slavery-forever decision of the Supreme Court, *the North and the West were the Rebels.*

The Southern leaders maintained that their constitution was the real, true United States Constitution, which they were following and the North was violating. So the Confederates wrote theirs side by side with that of the United States, formally the same. But in the very first few words, the meaning was as different as life and death. I have placed the preambles side by side, italicizing the Confederate changes:

Preamble United States	Preamble Confederate
We the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.	We, the People of the Confederate States, *each State acting in its sovereign and independent character, in order to form a permanent Federal Government,* establish justice, insure domestic tranquillity, and secure the blessings of liberty to ourselves and our posterity—*invoking the favor and guidance of Almighty God*—do ordain and establish this Constitution for the Confederate States of America.

Compare these closely. The United States was created to form *a more perfect union of the people;* the Confederacy to form a federated government of slave states, each acting in its wholly separate and independent character. The United States Constitution created a government of the people; the Confederate, a loose league which had no sovereignty, each state having the sovereignty and each being in effect a nation.

Of great importance is the fact that no provision was made

in the Confederate for the *general welfare* (on which I have already commented), either in the preamble or Article I, Section 8, first paragraph, which follows:

United States	Confederate
SECTION 8. The Congress shall have Power—	SECTION 8. The Congress shall have power—
To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States:	To lay and collect taxes, duties, imposts, and excises, *for revenue necessary* to pay the debts, provide for the common defense, *and carry on the Government of the Confederate* States; *but no bounties shall be granted from the Treasury; nor shall any duties or taxes on importations from foreign nations be laid to promote or foster any branch of industry; and all duties, imposts, and excises shall be uniform throughout the Confederate States:*

This section made the Confederacy in effect a mere military alliance, and (by provisions in other clauses) a very weak one. Specifically, it provided revenue for debts; no money to be spent for the benefit of the people; no bounties; no tariff; no internal improvements. Appropriations were made technically difficult.

Men frame and interpret constitutions (in the name of liberty) to preserve and protect their economic interests. The big plantation-owner considered the Constitution the guardian of King Cotton and slave labor. The big industrialist today considers it the guardian of unrestricted monopoly, and "free" labor. The interested parties, whether Plantation-Owner or Plant-Owner, have always fought for their interests—by Plantation Patrols or Plant Police, when "necessary."

A true living constitution springs from a harmony of land and people and water—from some fair distribution of the land, whether in the actual form of land or of jobs. Free men under a living constitution must have something to say about how long they work, how much they work for and under what conditions. They must have a government which protects these

rights against any attempted infringement by private police. Thus, and thus only, do the people win security, dignity, and happiness.

A recent resurrection of Confederate political philosophy is the Supreme Court decision declaring the Agricultural Adjustment Act unconstitutional. Here Mr. Justice Roberts rewrote the American Constitution, and almost in so many words substituted the Confederate Constitution.*

In polite phrases he virtually struck the general welfare out of the Constitution. He also wrote the "no-bounties" of the Confederate Constitution into ours by saying he didn't think the farmers were entitled to benefits or subsidies. Because Mr. Roberts did not like the law enacted by Congress, he said it was unconstitutional.†

The theme, the basic idea of Justice Roberts' decision, was "states' rights," embodied in the preamble of the Confederate Constitution, but *not* the United States Constitution. The slave-owner claimed slavery was merely a local, or state matter; in the AAA opinion Mr. Roberts said farming was a local matter. What Mr. Roberts really did was to attempt to deny men the right to govern themselves, as Mr. Justice Taney did in the Dred Scott Case.

In so doing, he ignored natural geography as well as the national character of our economy—facts which were recognized even at the beginning of our republic. George Washington said in his first annual address to Congress, "The advance-

* Walton Hamilton, constitutional authority, says in "Who Are the Fathers?", *Lawyers Guild Quarterly,* September, 1938, that the "Quadumvirate of Stalwarts—Van Devanter, McReynolds, Sutherland and Butler, J. J. . . . drew from a nationalistic document [the Constitution of the United States] the express provisions in the Constitution of the Southern Confederacy." Thus Mr. Roberts is not the only one to follow the Confederate Constitution.

† Referring particularly to the Court's declaring state legislation unconstitutional, the late Justice Holmes remarked that he could discover "hardly any limit but the sky." And merely because it may "happen to strike a majority of this Court for *any reason* undesirable." Baldwin *vs.* Mo., 281 U. S. 586.

ment of agriculture, commerce and manufactures by all proper means will not, I trust, need recommendation."

In spite of what George Washington took for granted 150 years ago, Mr. Justice Roberts still thinks that farming—in which a major problem is land washing from one state to another, over the face of the nation—*is a mere local matter.* And though the separate states cannot possibly contest such interstate forces, Justice Roberts commands them to do so. In all of this, Mr. Justice Roberts is following the philosophy of the Southern Confederacy to a *T.*

Of course, these comparisons are getting ahead of the story. I merely wanted to show how Mr. Justice Roberts slipped the Confederate Constitution over on us and, himself a Northerner, reversed the Civil War.

But let us get back to the Civil War itself. There are bugle calls, the sound of artillery, and the clatter of men's equipment. It is the second Battle of Bull Run, in Virginia, and the men's equipment that one hears rattling is that of the Northern troops, fleeing headlong into Washington, with the troops of the Confederate States of America relentlessly pursuing them.

24

FIFTY THOUSAND BAYONETS

Lincoln's Emancipation Proclamation

In 1862 the military position of the United States of America was precarious.

Lincoln was deeply distressed.

It was then, while the constitutional stream was swirling red with blood, that there eddied on the edge of it the Emancipation Proclamation of Abraham Lincoln. I have heard Negroes chant, with tears streaming down their eyes, that "Lincoln freed the slaves." Grandchildren of abolitionists, with smirking faces, have volunteered the same information.

So it must be true.

But it is not even remotely true.

The Emancipation Proclamation did not "free the slaves." It was not intended to.

Frequently, before Lincoln became President, and in his inaugural address, he firmly stated he had no such intention. To Horace Greeley he wrote, in 1862, that his only object was to *save the union,* and it is "not either to save or destroy slavery. . . . If I could save the Union without freeing any slave, I would do it; and if I could save it by freeing all the slaves, I would do it; and if I could save it by freeing some and leaving others alone, I would also do that."

On September 13, 1862, he wrote religious groups in Chicago that freedom for the slaves was entirely impracticable.* Further, that he was not going to issue any emancipation proclama-

* Nicolay and Hay, *Complete Works of Abraham Lincoln,* Vol. VIII, p. 28, "Reply to a Committee from the Religious Denominations of Chicago, asking the President to Issue a Proclamation of Emancipation, Sept. 13, 1862."

tion since it would have no more effect than the "Pope's Bull against the comet."

But Lincoln had a much sounder reason for not freeing the slaves. From the border states, where slavery existed, there were "fifty thousand bayonets"—fighting on the side of the North—soldiers who might desert to the Confederacy if slaves were freed. "It would be serious," continued Lincoln, "should they go over to the rebels." But nine days later he issued what he called the "Preliminary Emancipation Proclamation," although he also said in his letter to the religious bodies that the whole world would see it "must necessarily be inoperative."

In it, he announced that "pecuniary aid" would be given to slave states *not in rebellion.* No slaves were to be freed that were owned by "loyal citizens." Then, in his annual message, delivered December 1, 1862, he proclaimed a "compensated emancipation."

He suggested the states be given until 1900 to abolish slavery. The states were to be paid for the slaves in United States bonds. Of course, the states must be "loyal," but there was a belief that he wanted to buy the war off. One thing is certain, however: he was offering something to the "fifty thousand bayonets" so that they would not "desert to the rebels."

Actually he was offering them a continuation of slavery, for he specifically excepted all areas of the United States under Federal "bayonets" and Federal control. He followed this on January 1, 1863, by proclaiming that after that date, "all persons held as slaves within any State, or designated part of a State, *the people whereof shall then be in rebellion against the United States,** shall be then, thenceforward, and forever free. . . ."

Lincoln did not "free" the slaves except where the United States government was unable to make freedom effective. He

* My italics, but notice closely.

was careful to except even Southern districts where the Federal Army controlled. He enumerated "emancipated" areas with exceptions as follows:

> Arkansas, Texas, Louisiana (*except* the parishes of St. Bernard, Plaquemines, Jefferson, St. John, St. Charles, St. James, Ascension, Assumption, Terre Bonne, Lafourche, St. Mary, St. Martin, and Orleans, including the city of New Orleans), Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia (*except* the forty-eight counties designated as West Virginia, and also the counties of Berkeley, Accomac, Northampton, Elizabeth City, York, Princess Anne, and Norfolk, including the cities of Norfolk and Portsmouth), and which excepted parts are for the present left precisely as if this proclamation were not issued.

Besides the exceptions, Missouri, Kentucky, Maryland, and Tennessee were omitted and therefore perpetuated, as far as possible, as slave states.

Where there was Confederate military occupation, he gave an empty freedom, calling upon military and naval authorities to protect such "freedom." But where the American flag flew, *no freedom*—slavery was recognized and protected.

Though this so-called Emancipation seemed a cruel joke on the Negro—to grant him freedom where he couldn't get it and make him a slave where the power of the United States held sway—in reality it assured him his eventual liberty.

For those to whom the slavery issue was of supreme importance Lincoln used the word *emancipation.* For those in the border states who did not disapprove of slavery, but who believed the preservation of the Union was all-important, he carefully avoided emancipation.

Superficially judged, Lincoln's emancipation juggling was

immoral pretense and evasion. But from the long view it was great statesmanship employed to achieve a far more significant moral and democratic goal. Lincoln did preserve the Union. And that meant not only the eventual abolition of slavery but the extension of the democratic principle throughout the United States—the extension of the concept of general welfare as opposed to "states' rights."

25

SLAVES, TRICK VESTS, NEGROES, RADICALS

The 13th, 14th, & 15th Amendments

After the ragged troops of Lee trudged home, the Confederate Constitution was hauled off as a souvenir, and is still held as one, by private persons.* The South was completely broken—militarily, politically and economically.

In Washington the "Radicals" were dominant in Congress. They let the blood dry on the Constitution. Then they put the Constitution on ice and chained the door. Military destruction, they felt, was not enough. They proceeded to "reconstruct" the South, that is, to make its financial, physical and agricultural destruction permanent.

Because the Dred Scott decision in all its ramifications had not been reversed by the High Court and was therefore still the "law" theoretically, constitutional amendments were offered in rapid succession to correct the situation. With the force of war hatred in the North and fear of Yankee bayonets in the South, three amendments were sledge-hammered onto the Constitution.

They were the Thirteenth (adopted 1865), the Fourteenth (1868), and the Fifteenth (1870).

Amendment Thirteen abolished slavery.

The famous Fourteenth Amendment, which we will discuss at length in the next chapter, had four sections.

The First Section provided that *persons* should not be deprived of life, liberty or property without due process of law. This is the section that made the amendment famous—the only section that isn't, for practical purposes, obsolete today.

* Mr. Wymberley De Renne, Wormsloe, Isle of Hope, Savannah, Georgia, who is holding it for a high price, and does not answer my letters.

The Second Section provided that if in any state (meaning, of course, in the South) anyone (meaning any Negro) was deprived of the vote in certain elections, the basis of representation of that state in Congress should be cut down that much. Slaves had formerly been counted at three-fifths per human being, but by this provision, if a Negro were deprived of his vote, he had the liberty of not being counted at all, three-fifths or otherwise.

This generous provision of Congress is interesting because it showed that even in the North, three years after the war, there was not much expectation that the Negro would get to vote.

The Third Section excluded all Confederates from holding any state or federal office except by a two-thirds vote of Congress. Inasmuch as the Southerners had already been disfranchised on a large scale, it looked as though the Republicans would control forever.

But the real genius of constitutional government was shown in the Fourth Section. It was the pride and glory of the Grand Old Party. In that Section these Republican Founding Fathers solemnly slipped in a provision for pensions: ". . . debts incurred for payments of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned." So far as I know, it is the only time such provision ever appeared in a national constitution.

Doubtless the reason this was included was that Congress was still thinking about the Dred Scott decision, and it didn't want the Court to cut down the pensions that Congress knew it was going to authorize. Also, thought the Congressmen, it would be a good idea to suggest pensions right there in the Constitution, so all could merrily chant, "G.O.P. Forever."

Indeed, by this marvelous foresight and statesmanship, the G.O.P. held the reins of government almost unbrokenly for three-quarters of a century. The same Section also provided

that neither the United States nor any state should pay any Confederate debts.

Then, in 1870, was adopted the Fifteenth Amendment which was supposed to give Negroes the right to vote. Amendment Fifteen provided that no citizen should be deprived of suffrage on account of "race, color, or previous condition of servitude."

The most interesting of all, however, was the development of the Fourteenth, the Hat Rack Amendment. On this Hat Rack were hung all of the trick hats, slick raincoats, and disappearing vests of the big corporations. By it, corporations, instead of persons, eventually got the due process of law; real persons like you and me, got none, or almost none.

26

AMERICAN PEOPLE ASLEEP AT THE SWITCH

The Fourteenth Amendment

There was nothing wrong with the Fourteenth Amendment. It was, and is, one of the best parts of our Constitution.

However, something has happened to it. That Amendment, hailed as a great edifice erected to invest the people with "due process of law" and the rights under the Bill of Rights, looks today like a great skyscraper gutted by fire. Some repairs have been made recently, but only a couple of stories have been fixed up on this skyscraper of human rights. We will talk about them later.

Thirteen is not America's unlucky number. It is Fourteen.

In any event, the time has certainly come for the people to study the original meaning of the written Constitution, particularly the Fourteenth Amendment, because the whole economic and political history of the United States from the eighties until now, hinges upon it. The preservation of democracy is no joke. The people cannot solve their problems by plugging their ears, squeezing their eyes shut like nature's children, and leaving it to judges' decisions.

The original language and meaning of the Constitution should be compared with present-day interpretations, for the language has not been changed. The people should compare what has been imposed *upon* and substituted *for* the original meaning. Surely if the Fourteenth Amendment meant one thing in 1868 and means something entirely different in 1939, We the People have a right to get curious and ask what the change is, and why.

By this Fourteenth Amendment, Negroes were recognized as citizens, and persons. Of course, the Amendment was sup-

posed to extend to all persons. It was generally supposed to protect *human* rights and nothing else. Certainly, it was not adopted to protect corporations, monopoly and big business. But this edifice of human rights looks today like a building in smoking ruins because the Supreme Court gutted the living rights of the people and left only the twisted legal skeleton as guardian of the interests of corporations, monopoly and big business. The Court greatly diminished "states' rights" by using this Amendment to declare unconstitutional state laws enacted to regulate corporations and monopolies. This in effect gave the corporations license to be independent governments.

Let us find out how the Court went about it. Let us read Section 1 of this famous amendment. Read closely (I have italicized certain words) and consider the note in the margin:

> Section 1. All *persons* BORN or NATURALIZED in the United States, and subject to the jurisdiction thereof, are *citizens* of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of *citizens* of the United States; nor shall any State deprive any *person* of life, liberty, or property, *without due process of law;* nor deny to any *person* within its jurisdiction the equal protection of the law.

Here is where the judges did it . . .

Bear in mind that this is an integral part of the Constitution of the United States, an amendment *adopted by the people.* No President, set of congressmen, or judges have any right to change it.

ONE: "PERSON" ARBITRARILY CHANGED TO "CORPORATION" BY COURT

No one can object to my italicizing and dressing up the Amendment to emphasize that it said *person,* and *meant a natural person.* But the Supreme Court waved its magic wand over this natural person and transformed him into a *legal person*—a corporation. Ask any lawyer in America, or first-year law student, and he will tell you this is correct.

TWO: "DUE PROCESS" ALSO ARBITRARILY CHANGED BY COURT

The next thing was to pull the "due process" out and make of it something it had never been in all history. Through the ages of Anglo-American history, "due process" *has always meant* that a person should have his day in court, and neither his property nor his liberty could be taken from him by a government without his day in court. It meant fair procedure —a rule to be followed.

The Fifth Amendment to the Bill of Rights already had a due process clause. The Congress feared, however, that the Southern states would not really protect the rights of Negroes and give them due process of law. They considered it necessary to adopt the Fourteenth Amendment because of the American concept of "dual sovereignty" because our powers of government are split between the states and the federal government.

But the Supreme Court seized upon the "due process" clause and, through legal sleight-of-hand, utilized it to remove corporations from control by state law.

It was a step-by-step procedure of the Court, not of the people or their representatives in Congress. Here it is, trample by trample, blow by blow:

Since we cannot deprive an inanimate object, such as a corporation, of life or liberty—since we cannot deprive something that is not human, of human rights—we'll make a corporation into a human being.

The High Court at first refused to make a corporation into a person. The Court so refused in the Slaughter House cases in 1872-1873; in Munn against Illinois in 1876; and again in 1882, when the High Court was told by Roscoe Conkling that the Fourteenth Amendment meant "corporations" when it said "persons." Roscoe had been on the Congressional Committee that drafted the Amendment just after the Civil War. He said he had absolute proof of it in his hands, but like Father Coughlin when he attacked the Jews, he did not show his proof. The Court ignored and rebuffed him as it should have.

The Court knew there was no argument on earth which could make a person of a corporation. Corporations are made—not born. So the judges had to resort to mysterious hocus pocus the people could not understand.

It was a technique all Americans ought to have understood then; they certainly should see through it now. The judges had no powder, no military artillery. So they used judge-powder and word-artillery; one blinded the people, and the other bombarded them off the economic map. The people did not understand then, and do not now.

The judges did not attempt to prove anything. They merely announced the birth. Since this is almost unbelievable, I have produced a photograph of the birth certificate—the full Court proceedings—just as it was printed in the Supreme Court reports. (See following page.)

Thus by judicial fiat, the plain terms of the Constitution were reversed.

Now that we've got our bouncing corporate babe, we'll slash away the century-old meaning of "due process." We'll substitute a sow's ear for the silk purse of liberty, *due process of*

[Nos. 464, 621, 622.]

Argued Jan. 26, 27, 28, 29, 1886. Decided May 10, 1886.

IN ERROR to the Circuit Court of the United States for the District of California. *Affirmed.*

The case is stated by the court.

Announcement by *Mr. Chief Justice* **Waite:**

The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to these Corporations. We are all of opinion that it does.*

law; and by that substitution make it possible for us to declare unconstitutional anything we do not like—whether state or national policy, whether in the realm of economics, politics, or anything else. *By this prestidigitation, the Court can declare the Constitution itself unconstitutional.*

How? Why we, the Court, will simply arbitrarily pronounce a state law *unreasonable;* therefore in violation of due process of law; and therefore unconstitutional. We shall decide not upon the constitutionality, but upon legislation. By a build-up of words we shall hold innumerable state acts "unconstitutional."

This interference in the government of states was no small matter. By 1935 the Supreme Court had decided nearly a thousand cases under the Fourteenth Amendment. Senator Borah said in 1930 that the Supreme Court, through its use of the

**Santa Clara County* vs. *Southern Pacific Railroad,* 118 U. S., p. 396, Chief Justice Waite.

Fourteenth Amendment, was the "economic dictator of the United States."

The effect of this was that, if the judges felt like saying so, state laws or regulations could not be enforced, even if they were of benefit to the citizens of a state. In many cases—for instance the minimum-wage and child-labor cases—it meant that neither the federal nor state governments could extend protection to millions of human beings.

Thus, by the simple device of arbitrarily calling a corporation a "person," the Court took away the rights of real human beings, by the millions, and licensed corporations and monopolies as a *third form* of government.

At the same time, while the Supreme Court was extending this immense uncontrolled power and sovereignty to the great corporations, it long refused to offer protection of civil liberties to people as against the states, as we shall see in the chapter "Civil Liberties Today."

> For PROPERTY, liberty—*liberty not to follow the law of states.* For HUMAN BEINGS—*courts closed to human and personal rights.*

According to judicial reasoning, the judges could have included the horses and mules of the Dred Scott decision, as well as corporations, among "persons." More, they could have taken over the monkeys in the zoo, making them persons, and could have made monkeys born in this country citizens. This would have been nearer reasonable—for man is closer to monkey than he is to a corporation. In any event, the Court succeeded in making monkeys out of millions of human beings.

What all this really means is that this "due process" of the Fourteenth Amendment has been used in a long series of decisions to prevent the states (and the national government through the Fifth Amendment) from carrying on effective government. As to states, it has varying effects: to shear utility commissions' power to give citizens lower rates on

electricity, gas and other necessities; to prevent fixing minimum wages (such decisions lately reversed, after fourteen years); to prevent protection of citizens in hazardous occupations; to regulate hours of work to a minimum of sixty; to regulate employment exchanges which had been exploiting workers; and dozens upon dozens of others. All of these were acts passed by the people's representatives for the people's social betterment and protection—the same "We the People" of the Constitution and the "persons" of the Fourteenth Amendment.

Not only did the Court deny these protections to *persons* by declaring them unconstitutional, it further announced that it had the power to protect a citizen's constitutional liberties only when they had been violated by a state law or procedure. Thus, if violence were to be done by mobs, or by state and local officers acting unofficially, the Court maintained that since such violations had not been by a state itself, Congress could offer no protection by federal statute under the authority of the Fourteenth Amendment. This completed the ruin of all the purposes of the Fourteenth Amendment. However, in Chapter 31 on civil liberties I shall point out some growing signs of hope, and a change for the better in the Court.

The whole idea of "states' rights" needs a going-over in the clinic of the people. Much of the bellowing for states' rights has been by people who have done the most to break them down. To get at the truth, the people must not entrust this clinical diagnosis altogether to legal witch doctors; they've got to do it themselves. That is what must be done in the future.

But after the World War, after the gilded, empty, bootleg twenties, people awoke one fine morning to find the greatest stock market crash in history, a stupefied government, a confused President, a scared people, and a badly depleted continent.

Yes, it was certainly time for the people to take an interest in government, for they had been abjectly sleeping at the supreme judicial switch, and they had been thoroughly and duly "processed."

27

HOOVER OUT, ROOSEVELT IN

Alexander Hamilton and the Supreme Court

In 1932, following deep economic and mental depression, Herbert Hoover was defeated for re-election to the Presidency. It was a protest vote; Mr. Hoover was merely being voted *out*. The man who got his job was Franklin D. Roosevelt.

Banks were crashing to the right and the left. Business on a big nation-wide scale was going broke. There were nobody knows how many millions of unemployed; great numbers of them were traveling aimlessly about on freight trains. People still remembered the eviction of the "Bonus Army"—eviction by tear gas and military force—and they were talking of "revolution," bloodshed, and disorder.

Into this scene, with a swift and dramatic rush, galloped Roosevelt. He proclaimed the bank holiday (clearly an unconstitutional exercise of power but happily accepted all over the country) and followed up with other extraordinary measures. Congress passed laws without reading them, big money was spent, relief was given to businessmen and bankers (who were not heard to complain) and finally relief was extended to the people themselves.

Then Congress enacted the National Industrial Recovery Act (NRA) and the Agricultural Adjustment Act (AAA). Both affected the lives of practically every living American. Good or bad, these (and other) measures were the new Administration's method of meeting the depression. The Administration was responsible.

Then the Supreme Court knocked out the NRA and the AAA. The NRA was becoming an unpopular flop. It is gen-

erally believed that had the cases testing both laws been argued at the height of their popularity, the Acts would have been declared constitutional. In any event, they were knocked out, and when they were, it nearly knocked out the new Administration, or what by then was generally known as the "New Deal."

The High Court continued to knock out the laws of Congress. A majority of the justices seemed to line up against every law of the new Administration as soon as it reached the Court. It looked as though they had decided to declare unconstitutional any law that conflicted with their own views of what was good for the American people.

As this book is being finished, it is possible to appraise those hectic years with some detachment. Since then have come the Supreme Court controversy (which we shall discuss a little later), various reversals of opinions by the justices of the Supreme Court, and some defeats for the Roosevelt Administration.

It is desirable to make our appraisal from a viewpoint of government efficiency and responsibility. This will necessitate examining the powers of the Supreme Court itself—a tough and unpleasant job. For the people of the United States probably know less about the Constitution and the Supreme Court than any other important subject. Furthermore, many of them have for the Court and its members a blind adoration that makes impossible a commonsense examination.

Controversies over the Supreme Court are about on the level of backwoods religious controversies of a hundred years ago. I have spent some time reading these old controversies—bitter, cruel affairs in which one denomination fell out with another over some "doctrine" as to how the soul could be saved. The arguments became fantastic, unreasonable and senseless. And today that same fanatical note creeps into many discussions of the Supreme Court, even among well-educated lawyers.

We need, then, to look at some historical facts about the High Court. This inquiry is necessary because the Supreme

Court has blocked legislation; the people should know why and under what powers the court acted.

> *The Supreme Court has no express power under our Constitution to declare an act of Congress unconstitutional.*

However, the Court has taken the power and has exercised it. Dr. Charles W. Gerstenberg says in his textbook, *American Constitutional Law,* "Severe criticism has at times been leveled at the Court's arrogation of such power, but its exercise has nevertheless been acquiesced in both by the people and by the other departments of government." Professor Willis, in his *Constitutional Law of the United States,* says that the Supreme Court is *supreme* over the other branches of government and that "this doctrine is entirely originated by the Supreme Court."

> The Court today has the power, though there is no provision for it in the Constitution. But if the American people should withdraw their acquiescence, the power would no longer exist.

Lord Bryce in his *American Commonwealth* stated the accepted theory when he said, "Such determination is to be effected by setting the statute side by side with the Constitution, and considering whether there is any discrepancy between them." Certainly such procedure was not followed in the NRA and AAA cases; for if they were set side by side with the Constitution, it would be hard to find any discrepancy. In fact those cases, as well as many others, were a good deal like the cases under the Fourteenth Amendment—the High Court had to put a heavy strain on its imagination to declare unconstitutionality.

Admitting for the moment the power of the Court, let us examine the Constitution. We find that it gives the Supreme

Court original jurisdiction only in those cases affecting ambassadors, ministers, consuls, and states. Any other case must be brought to it from lower courts—statutory courts created or abolished at will by Congress—and such appellate jurisdiction is only

> with such exceptions and such regulations as the Congress shall make.*

In other words, in the cases brought up to the Court, Congress can make whatever exceptions and regulations it cares to. Should it care to except Social Security or TVA, it could do so. Whether Congress would do it is another matter. But it is a fact that the Judicial Code, enacted by Congress at its first session in 1789, actually regulates the business of the Supreme Court. Regulations affecting federal Courts and the Supreme Court are made from time to time by Congress. They are considered amendments to the Judicial Code.

This power of Congress has been claimed and exercised from the first. Alexander Hamilton stated it quite clearly when he was persuading the people to accept the Constitution. He went into detail (*Federalist* No. 81) as to the powers of the Supreme Court because the people feared it might exercise excessive powers. Objectors were pointing out that in England the people have the final control through Parliament, but that in America the Supreme Court could make usurpations, and the people would be without remedy.

Hamilton demolished this argument completely. He laughed at it, scorning the idea of the Supreme Court's having any such power.

"In the first place," he said, "there is not a syllable in the plan under consideration which *directly* empowers the national courts to construe the laws according to the spirit of the Constitution."

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* See p. 259, Article III, Section 2, paragraph 2.

He remarked that of course the judiciary might be final in a *given case,* but that for all future ones, the rules could be changed. Here are his exact words:

"A legislature, without exceeding its province, cannot reverse a determination once made in a particular case; *though it may prescribe a new rule for future cases.*"

This means that in respect of the Schechter case, in which the NRA was declared unconstitutional, Congress could have prescribed a new rule for future cases and thus continued the NRA.

Hamilton assured the people that although the Court may occasionally err, the national legislature can immediately correct it. He assured them that the judiciary would be weak, subject to an important "constitutional check"—the power of Congress to impeach the Court at will. "This is alone," he added "complete security."

Mr. Hamilton proceeded to examine the Constitution in reference to what it actually says concerning the powers of the Supreme Court:

"We have seen that the original jurisdiction of the Supreme Court would be confined to two classes of causes, and those of a nature rarely to occur.

"In all other cases of Federal cognizance, the original jurisdiction would appertain to the inferior tribunals; and the Supreme Court would have nothing more than appellate jurisdiction, *'with such exceptions and under such regulations as the Congress shall make.'* "

This bright young man, who was later to become the first Secretary of the Treasury and was to die from a bullet fired by Aaron Burr, was always a clear writer, and not much given to repetition. But in the *Federalist* he continued to repeat himself on the power of Congress to make exceptions and regulations respecting the power of the Supreme Court. A few words after the foregoing quotation, he says:

"To avoid all inconveniences, it will be safest to declare

generally, that the Supreme Court shall possess appellate jurisdiction both as to law and fact, and *that this jurisdiction shall be subject to such exceptions and regulations as the national legislature may prescribe.* . . . This will enable the government to modify it in such a manner as will best answer the ends of public justice and security."

Once again he repeats "that the Supreme Court will possess an appellate jurisdiction, both as to law and fact, in all cases referred to them, both subject to *any* exceptions and regulations which may be thought advisable." *

And then he concludes, "It may in the last place be observed that the supposed danger of judiciary encroachments on the legislative authority, which has been upon many occasions reiterated, is in reality a phantom."

I have stressed these assurances of Hamilton because not much is said about them today. And obviously, since the Constitution is quite clear on the subject, the people should know and study them.

No one, not I or anyone else, wants to take away the Court's power as a High Court of *Justice*. But since we talk so often about checks and balances, here is something to consider. The direct method of checking the Court by regulating its business has never been used by any recent administration, though it was used just after the Civil War and acknowledged to be lawful by the Supreme Court.

Keeping this in mind, let us return to the year 1937.

After the NRA and AAA decisions, the Supreme Court continued to knock out the laws of the Roosevelt Administra-

* No judge or competent lawyer has ever denied this. In the great constitutional celebration of the three branches of the federal government held in Washington, March 4, 1939, Mr. Chief Justice Hughes, speaking of the federal judiciary, told Congress:

"We are a separate, but not an *independent* arm of the government. . . . You, not we, determine the establishment and jurisdiction of the lower federal courts and the bounds of appellate jurisdiction of the Supreme Court. . . . You, not we, have the purse and the sword. . . . What the people *really want,* they generally get."

tion. The judges were making it impossible for the government to carry out its responsibility to remedy economic conditions by settling labor disputes (such as sit-down strikes), by lending money to business, by giving relief to the unemployed, by operating the PWA or the TVA, or by carrying on numerous normal economic functions of a modern government.

Suddenly, a totally unprepared Congress received the note of the President of the United States asking it to increase the size of the Supreme Court of the United States. Few were on the floor of either House of Congress when the message came. The newspaper reporters had the information about an hour ahead and were jammed and packed in the press galleries of both Houses.

But let us move to the floor of the House of Representatives, and finally into one of the wildest, weirdest fights that we have ever had.

28

SACRED BRICKS, STRANGE POLITICAL COATS OF ARMS

The Tussle of Roosevelt and the High Judges

On the floor of Congress sit some fifty or sixty of its 435 members. There is no air of tension. The galleries are empty, save for a few regular gallery-veterans whom no one knows except by appearance. Only the occupants of the press gallery, who always have advance knowledge of White House messages, seem interested. Back of their gallery the telegraph companies are getting ready for a killing. They have ordered extra messenger boys for the flood of exultation and execration that will soon be on the wires. The Senate presents substantially the same picture.

The clerk, who has read thousands of messages, begins to read. A few representatives begin to listen. What's this?

It was a comprehensive message from President Franklin D. Roosevelt, suggesting certain court reforms, such as speeding up constitutional cases, protecting the government's interest where a constitutional issue is involved, enlarging the number of district judges, and altering procedural matters. These suggestions were considered necessary and have nearly all become the law by Congressional enactment.

What really raised tremendous opposition, however, was the proposal to increase the size of the Supreme Court—to "pack" the Court.

At the same time, serious disputes between labor and employer were arising over the country. Before the Court, but not passed on, were the Social Security, Labor Relations, and TVA acts. It was generally the opinion, before the controversy

started, that all these, as well as numerous other acts, would be declared unconstitutional.

Everybody, including the justices of the Supreme Court, took part in the unseemly row. Of course, the justices did not take a public or open part (except the Chief Justice who, in a letter to a favorite senator, rendered a public unofficial opinion for the first time in the history of the Court). But the justices were particularly humiliated over the fact that more justices might be put in the High Court. The situation was similar to the threatened "packing" of the House of Lords in England by Asquith in 1911. Asquith, Prime Minister, made the threat, but the Lords so detested the idea of more ready-made noble lords from the beer baronage and codfish aristocracy, to be created by His Majesty the King for packing purposes only, that they gave in to the House of Commons and quit blocking legislation.

During the Supreme Court controversy, various senators had secret conferences with Chief Justice Hughes and other justices. The story in Washington is that the senators politely suggested that if some of the High Court justices didn't change their opinions, the Court would surely get packed. Of these senators, one boasts of how, as a "liberal," he, Horatius-like, saved the country by getting the justices to reverse their opinions.

I do not vouch for the truth of all this. However, I predict Memoirs will be written some day, and the whole story will come out, unless the one or more senators who know the truth die early, and modestly.

In any event, after conferring with the senators, the justices *did* change their opinions, and reverse themselves on literally dozens of vital points of law. They showed they were better politicians than the politicians in Congress and much better than the President. The state Minimum-wage Acts, for years and years held unconstitutional; the Labor Relations and Social Security Acts, surely unconstitutional in the light of previous

opinions; and numerous other acts—all were held constitutional.

And so the justices of the Supreme Court won their fight with the President—as the House of Lords had done in England in 1911 when it gave Asquith's Administration what it wanted. Had the Court not changed its opinions, it most assuredly would have been "packed."

The real question is this: Has any governmental question been settled permanently? No. That is because the real issues never came out, among them Congress's constitutional power to regulate the Court. It was a Battle of Symbols, of throwing Sacred Bricks at one another, a sort of War of the Roses where there was a loud cracking of skulls and huzzaing over strange political coats of arms, in which the aristocracy and the Royalty—lawyers, high justices, the President, Congress—never took the trouble to explain it all to the people.

Most unfortunate is the fact that few people understand the issues, but have decided opinions, and that the confusion in government still exists. The real issue in so far as the judiciary is concerned *is whether the Supreme Court should have supremacy over all other branches of government.* Had the Court been increased in size, the settlement would have been only temporary. But on the other hand, since the Court changed its opinions to keep from being increased in size, that settlement is still only temporary, for we do not know whether the judges will stay put as the Lords have in England.

Therefore, the issue will inevitably bob up again. As the public forgets, the judges may change their opinions again, enter the field of legislation, and declare laws unconstitutional merely because they do not like them.

Hosts of people are blindly prejudiced on the Court issue. They refuse to view it as a simple question of whether or not a court shall be permitted to exercise legislative power. They refuse to see that it is a question of the effective functioning of the democratic system.

For example, suppose that during the last years of some administration, by virtue of quite legal vacancies, a President fills or "packs" the Court with "conservatives" (as Adams did just before Jefferson became President). Obviously, an incoming "liberal" administration—which might attempt to use other quite constitutional methods to meet serious economic, social, and political problems—might be blocked by a partisan Court. Whenever the will of the people, through their elected administration, whether liberal or conservative, is frustrated or vetoed by the Court, democracy has broken down.

In the present turmoil of the world we want effective government. We do not want dictatorship, but we know that to forestall dictatorship we must have a responsive, responsible government. *It is as necessary for business as it is for labor.* Constant interference in legislation by the Court affects the stability of the economic system and nullifies representative government.

29

NINE GODS OR NINE MEN?

The Supreme Court: Power and Personalities

Scene—Judea. The Lord has made a prayer, saying, give us day by day our daily bread. He has denounced the Pharisees and the High Priests, warning them to take heed that their vaunted "light is not darkness." And

Then answered one of the lawyers, and said unto him, Master, thus saying thou reproachest us also.

And he said, Woe unto you also, ye lawyers! for ye lade men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers.

Woe unto you! For ye build the sepulchres of the prophets, and your fathers killed them. . . .

Woe unto you, lawyers! for ye have taken away the key of knowledge: ye entered not in yourselves, and them that were entering in ye hindered. (Luke 11, 45-52.)

As I have tried to emphasize throughout, judges and lawyers have purposely made law difficult to understand; nor do they welcome people who try to understand. Worthy and good people ask no questions and respectfully bow to the symbols.

It has been true always, in all civilizations. It is not a question of sin or virtue; the lawyers and the judges have necessarily represented the people who have the money with which to pay fees.*

* "The leading lawyers of the United States have been engaged mainly in supporting the claims of the corporations: often in endeavoring to evade

From the legal fraternity have come some great teachers of "The Law"—that is, of *a way of life.* These great teachers have assisted the people in self-government, in their desire to better their lot. But such champions of human rights have generally been persecuted, hated dissenters, who became great only when they were laid away in the cold ground. Mr. Justice Brandeis, long a dissenter, is just about now beginning to be accepted as respectable—after his resignation.

In our law schools for the past half century, youngsters have been told that they will soon be "officers of the court," legal vestal virgins, as it were. The Supreme Court is pressure-pumped into their minds as a sort of theocracy that will benignly hand the people (if they only wait long enough) "decisions" (tables of the Higher Law) as to whether their wishes and needs are unconstitutional (sinful, in violation of eternal law).

I do not think I exaggerate this. Picking out at random a few textbooks, I found these references to the Supreme Court: "High priests of the law," "crowning marvel of wonders," "the real rulers of this country are the justices of the Supreme Court," "there is nothing to censure" about the justices, they have more "profound learning" than other learned groups, and their writing, as against that of literary men, is a model—"the best style of English language."

In similar vein, some professors of law expound the notion that the High Court *saves the people from themselves,* from their own hasty follies.

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or nullify the extremely crude laws by which legislators sought to regulate the power or curb the excesses of corporations." Mr. Justice Louis D. Brandeis (1905) before going on the bench.

"Actually, of course, the courts are available in proportion to one's ability to pay for their use, but legal theory has little to say about this stark reality. The lawmen know that the courts are accessible only to those able to bear the expense of litigation but legal theory treats this fact as an unfortunate accident rather than a fundamental characteristic of the legal institution." Prof. Edward S. Robinson, Yale University, *Law and the Lawyers* (1935).

In speaking over the country, I am often asked whether a judge, since he has a high salary, a job for life, and no responsibility to the people—isn't more honest and non-partisan than an elected official. This deserves a full answer. In the first place, justices are not non-partisan, for the simple reason that they are human beings. They have interests and convictions even as you and I. Chief Justice Taft frequently advised President Coolidge upon political matters; other justices have been in the thick of high and low politics. Our present Chief Justice resigned from the Court to run for President. In the second place, if a lifetime job without responsibility makes a man "honest," then we should elect congressmen for life and double their salaries to equal the $20,000 the justices receive. Quite naturally, no one would agree to that. And finally, if the people cannot trust their elected representatives, but must rely entirely on the views of nine men, the people do not trust themselves.

Selfish interests have thoroughly implanted the belief that all politicians are crooked. Using this smoke screen of persistent propaganda against representative government, these same selfish interests have been able to get a lot of crooks in office, making politics for the great majority of honest men in public office a hard and cruel game. Millions of people have been taught that politics is of itself "crooked" and therefore to be shunned. As a result, they evade the duties of citizenship, giving the crooks boundless opportunity to misrule and plunder the people themselves. This subtle maneuver has produced a widespread contempt for representative government.

In the same breath these selfish interests have been engaged in creating reverence for the judiciary. They have built the judge up as a mysterious and sacred oracle, whose words are almost Holy Writ. Although he is completely isolated from the general run of people and their everyday problems of jobs and crops, rent and bills, they would give to him the role of passing upon the people's legislation.

The background of the average judge is usually big corporation practice. There is nothing evil or dishonest about this, but his ideas must necessarily be influenced, at least to a certain extent, by his background, interests, associations, and training. His viewpoint of who should control or own the land and its resources is bound to be influenced by what he did before he got on the bench. Furthermore, once he gets on the bench, he is not likely to keep pace with economic and social change; for he has his lifetime job, no responsibility, and comparatively few associates (generally of the extremely conservative variety). No high justice would dare be seen in too progressive company, much less let it be known that he had even conversed with a "radical."

I believe it essential that we have a powerful Supreme Court, that it should be respected. But I do not think the people should respect the Court any more than they do themselves, nor the men whom they elect. If blind reverence or greater respect is given to a man with an appointive job than to a man with an elective job, it is an admission that Democracy and Representative Government are failures.

> *The members of the High Court should not be regarded as gods whose actions are always perfect, but as men who sometimes make mistakes.*

It is not difficult to debunk the myth of the Court's superhuman wisdom and sense of justice.

Law, as taught and argued, is technical and often tiresome. Frequently it is a mumbo-jumbo of judge-made "doctrines." For that reason I shall not attempt a legal analysis of a lot of Court decisions. Their income tax decisions, however, reveal pretty clearly just how selfless and godlike these men of the High Bench are.

Throughout the history of the Republic, the Court had maintained that only land and capitation taxes were direct

taxes and it had held the Civil War income tax law constitutional. Then, in 1894-1895, it declared the income tax unconstitutional.* This disturbed the people, because it was absolutely necessary to have an income tax in order to run the government, at least in time of financial stress. So an income tax amendment was adopted by the people in 1913—after fifteen years of agitation, and the loss of billions in revenue.† The amendment was carefully worded to make sure that everyone paid an income tax and that no source whatever of income would be exempt. Congress was empowered to lay taxes on income "from whatever source derived."

The justices of the Supreme Court, however, promptly exempted themselves and the other federal judges from taxation on their salaries, claiming the Constitution provided that their compensation (set by Congress) "should not be diminished" during their term of office. Of course, Congress was not in any way diminishing their pay; the *people* had passed an amendment to the Constitution for a tax *"from whatever*

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* This was Pollock *vs.* Farmers Loan, 157 U. S. 429 and 158 U. S. 601. Mr. Justice White, dissenting, said:

"It is, I submit, greatly to be deplored that, after more than 100 years of our national existence, after the Government has withstood the strain of foreign wars and the dread ordeal of civil strife, and its people have become united and powerful, this Court should consider itself compelled to go back to a long-repudiated and rejected theory of the Constitution, by which the Government is deprived of an inherent attribute of its being, a necessary power of taxation."

† See *Congressional Record,* July 6, 1937, for Honorable David J. Lewis' estimates of the revenue lost to the Government by the decisions of the Court. His figures were through 1936, and included the original repudiation, plus other exemptions made by the Court after the Amendment was adopted. His estimates, which have never been questioned, are as follows:

Repudiation income tax, 1894, 18 years	$1,500,000,000
Exemption public securities	2,000,000,000
Exemption employees, officers of counties, cities, States	1,000,000,000
Tax exemptions, community property, 8 years	200,000,000
Exemption income of companies from State-leased oil lands	3,000,000,000
Exemption income from stock dividends, 16 years	1,060,000,000
Evasion of surtaxes, 16 years	7,000,000,000
Total	$15,760,000,000

source derived." The justices were simply required to pay taxes like any other citizen in their bracket—no more.

But were members of the High Court to pay taxes like mortal men? No! This would reflect on their integrity, they asserted. This, they said, might affect their "independence." So they, subject to no laws on earth except those which they choose to apply to *themselves,** decided that *all other federal officials,* from the President through congressmen on through the last postal clerk *should* pay, but not the judges of the Supreme Court or of other federal courts.†

The Court went further. Although one of the principal reasons for adopting the amendment was to make certain that Congress could stop all loopholes through which income from "any sources" could escape, the Court has exempted the bonds of cities and states; it has gone even further and exempted all regular city and state employees. Even employees of the Water Department in New York, and hence all similarly employed in America, were exempted. This meant practically all manner of state, county, city and school employees, of course.

Great concentrations of wealth are exempted by exempting the bonds of cities and states. Bernhard Knollenberg, writing in *Harpers,* November, 1938, says, "This situation, especially the tax-exempt bond aspect of it, is intolerable." And, I might add, the exemption of the members of the Court themselves

* "The only check on our own exercise of power is our own self restraint" —Justice Stone in U. S. *vs.* Butler, 297 U. S. 1 (1936); "We live under a constitution, but the constitution is what the judges say it is"—Chief Justice Hughes, before his appointment to the Supreme Court.

† This case was Evans *vs.* Gore, 253 U. S. 245. Visit your lawyer and ask him to show it to you. In the case, Mr. Justice Holmes dissented with some heat. He said: "I do not see how judges can claim an abatement of their income tax on the ground that an item in their gross income is salary, when the power is given expressly to tax incomes from whatever source derived"; and further: "I see nothing in the purpose of this clause of the Constitution to indicate that the judges were to be a privileged class, free from bearing their share of the cost of the institutions upon which their well-being if not their life depends."

Also: "To require a man to pay taxes that all other men have to pay cannot possibly be made an instrument to attack his independence as a judge."

by themselves from their constitutional duty to pay taxes, is also intolerable.*

From the history of income tax as well as the history of the Fourteenth Amendment, we may draw a conclusion: There is no sense in passing an amendment if it is to be knocked out by the Court afterward. Although the Income Tax Amendment specified (and the debates in Congress made the intention clear) that Congress was to have the power to tax incomes "from whatever source derived," the Court held that when the people adopted the amendment they did not mean what they said, and that sources previously immune were still immune!

If the above is not enough to purge completely any feelings of reverence for the Court, a brief glance at the lives and personalities of the justices should have no one on his knees. For my own satisfaction I have carefully checked the lives of some twenty justices, and can safely make a few generalizations. I do not do this with any intention of detracting from the respect due them as honorable, dignified and conscientious men.

Of the twenty I checked, a few were brilliant men. A fair proportion were average politicians; two quite mediocre. I think you will agree that one was a mediocre fellow, for he had been an elected and defeated politician—a mere congressman, or representative before he was "raised" to the Bench. Still another ran for Congress, but never got elected.

Some of the justices, I found, had read practically nothing but law since they had left college forty to fifty years before. Several had, for many years *before* they were appointed to Court, been away from vital contacts with the people. Some

*As this goes to press, the Court is again reversing itself—this time to the good. All these exemptions are being removed. From a reading of the decision, however, it appears that the Judges' salaries are still exempt. The point is that Congress' right to tax from "whatever source derived" should never have been interfered with.

had worked all their lives for particular corporations or railroads. With few exceptions none of them was well informed on business itself, soil and water conservation, agriculture, or the other serious problems of our day. Certainly no one of them was divine infallibility come to earth.

People justly classify the judges as they do themselves—as "liberals" or "conservatives." But a pronounced exception is Mr. Justice Stone, on the Court today, who is often referred to as a "liberal" because he does not declare as many New Deal acts unconstitutional as do the "conservative" members. As a judge he is neither "liberal" nor "conservative"—*he is a judge who believes in the Court's minding its own business, and not interfering in legislative matters.* He is, in fact, personally a Republican Conservative. But he is one of the few justices, liberal or conservative, who in recent history has not injected his own prejudices into an opinion.

An ideal Court would be composed of men of the general stamp of Justice Stone—men who did not allow their personal views and prejudices to influence the opinions they wrote. But obviously that is asking too much. The judges will continue to write their views into their opinions, and so long as appointments are made from among wealthy corporation lawyers, we shall continue to get conservative or reactionary opinions.

In recent years the Court has gone far beyond its powers, as it did in the Dred Scott decision which the people had to reverse with a long, bloody and costly war. And remember that *the people have always reversed the Court* when it handed down a decision that reversed one of their own. They did it on the income tax, and numerous other issues. They have done it again recently in social security, minimum wages, labor relations, TVA, and other cases involving commerce and business.

Of course the great and high functions of the Court should be preserved. But certainly, the Court should retire from the field of legislation and stick to settling cases, preserving the

liberties of the people, and declaring acts of states unconstitutional when necessary. But neither the Court, Congress, nor the President will mind their own business unless the people stay awake and demand that all branches of government serve always and only the general welfare of the people.

30

WHAT'S LIBERTY IF YOU DON'T EAT?

STATEMENT OF PROBLEMS:
OUR GOVERNMENT

What do we American People want?

We want liberty and economic security.

Democracy, to me, is liberty *plus* economic security. To put it in plain language, we Americans want to talk, pray, think as we please—and eat regular.

I say this because there is a lot of nonsense in talk about liberty. I have said before that abstract liberty is meaningless. You cannot fill the baby's bottle with liberty. Here is what I would consider a Charter or Chart of True Liberty:

TRUE LIBERTY
MEANS
INTELLECTUAL LIBERTY *Plus* ECONOMIC LIBERTY

Equality of educational opportunity: institutions of learning open to brains, not billfolds.	Equality of social opportunity: jobs and careers open on the basis of ability, not birth.
Complete freedom of expression.*	Freedom to select jobs from choice rather than necessity.
Development of individuality and personal dignity.	Decent and rising standard of living for all willing and able to work with limitation on earnings subject only to social obligations.

* Subject, of course, as noted before, to laws of slander and libel, obscenity, use of force, treason, and the like.

Our job is to put some such chart into effect—to have a country whose economic *machine* works, whose people have jobs and a decent standard of living for all, and whose "ancient freedoms" are protected.

Already the people of many nations have traded in their freedom for temporary security. I say "traded" because liberty never just disappears. When the people of Italy and Germany lost their trade-unions and their political parties—lost their economic power, that is, to the small group of financial overlords and their dictators—they lost their liberty. Many of them got jobs (such as they were) in return—jobs in war and allied industries—jobs building roads and fortresses. But this trade-in for economic security of a sort is almost certain to lead to the most terrible of all losses—the suffering, hardship and death of war.

It is unquestionably true that the rise of dictatorships and the destruction of democracy has been based on one thing—*unemployment*. In Austria and the Sudeten region, Hitler was able to win the support of certain sections of the people who hoped to get jobs. They were tired of a democracy that gave them no work.

The problem before the American people is how to win economic security without giving up their democratic self-government to the dictators and war-makers.

Throughout the country I find practically no people who will say that they favor any kind of dictatorship. There is, indeed, genuine fear of dictatorship. This fear, however, leads to a weaker and weaker government, which seems to me to be the surest road to dictatorship.

Historically, Americans have had an open, avowed suspicion of "government." They have actually had an aversion for it. Such an attitude certainly renders government ineffective. We elect, say, a governor or President, and then to show our independence, we elect for the new governor or President a whole crew of his enemies. In that way we think we keep

him from being a dictator—at least we keep him "checked and balanced." The trouble is we do such a good job that we balance the poor fellow off and check him out—and *check ourselves with ineffective government in the bargain.* Our idea of democratic government is to elect somebody and then dog him to death. *A powerful people must have a powerful government;* and if a government is representative, and democratic, and responsible to the people, the people need not worry about dictatorship.

It has been said that there is nothing new in the world. It is simply not true. We unquestionably face essentially new problems today—problems never before faced in the world. They are the problems which have grown out of machine mass production and scientific advance.

> *We have utterly failed to adapt our economic and political machinery to the complete technical revolution in industrial and agricultural production.*

The important thing is for the people to realize this—to know it—and then figure out what to do about it.

One thing certain—greater government (whether democratic or dictatorial) participation in the daily life of the people is an inevitable necessity. Many conservative businessmen, even, are aware of this. Sidney Baer, great department store owner in St. Louis, says:

> The masses desire greater federal control and a more vigorous policy on the part of the government. . . . Many people may not like this transition, but it seems to me it would be well for them to reconcile themselves to it, and recognize that further centralization of power is inevitable.

And *Fortune* magazine (whose clientele is composed of the wealthiest and most conservative people in America), noting

that there had been a nation-wide swing toward favoring greater government participation in economic affairs and private enterprise, had this to say:

> If the principles of democracy and of private enterprise are to be preserved, it is evident that private enterprise must admit into its affairs, as representative of the people, a government profoundly concerned with the successful operation of the economic system.
>
> It should in the future be the object of business, not to obstruct Government intervention at any cost, but to see to it that the intervening Government is enlightened in economic matters.

We no longer have new and virgin lands with heavy immigration and a rapidly increasing population—lands on which the hustling American could always find new opportunities. It was then good sense to talk of independence, individuality, and "making good." But now that we have a heavily populated industrial nation and the lands all owned and pre-empted, it is nonsense to attack our problems from the pioneer agrarian viewpoint.

Our forefathers had sense enough to break away from their forefathers, and if we are not to chinafy ourselves, we had better look at things with an open mind. Unlike our forefathers, we can still use ballots instead of bullets to attain liberty and security—if we are not too stupid and apathetic. But in a mass production age, we have to realize that the adaptation must be made on a mass basis and paid for by the wealth accumulated by mass production itself.

At the assembly of all branches of government at the Capitol, March 4, 1939, Mr. Chief Justice Hughes said:

> With respect to the influences which shape public opinion, we live in a new world. Never have these

> influences operated more directly, or with such variety of facile instruments, or with such overwhelming force. We have mass production in opinion as well in goods. The grasp of tradition and of sectional prejudgment is loosened. Postulates of the past must show cause. Our institutions will not be preserved by veneration of what is old, if that is simply expressed in the formal ritual of a shrine. The American people are eager and responsive.

Already, under the Roosevelt Administration, the people have succeeded in getting enacted laws which constitute a great economic, social and political advance—laws which represent, for the mass of people, more security than they had and more control over the tremendous power of concentrated wealth. Few believe these laws ought to be repealed. Some of them will undoubtedly be strengthened or greatly expanded; none of any importance will be kicked out entirely. The most conservative American knows that we will never go back to the so-called "good old days of rugged individualism."

I do not advocate that government take over "business." I simply want to emphasize the absolute necessity for the people through their government to assume a greater degree of control over the affairs that directly affect their lives. This means the real cooperation through government of businessmen, workers, and farmers, not as separate and rival interest-groups, but as organic parts of the whole American economy.

31

WHAT GOOD IS LIBERTY IF YOU CAN'T GET IT?

Civil Liberties Today—For Better or for Worse?

Boss Hague of Jersey City is inadvertently, and with growing unwillingness, the force behind an encouraging revival of the fight for civil liberties in America. He is so crude that he has offended the most conservative people in the country—one federal District Court has enjoined him from further violating the liberties of the people, and the decision has been affirmed by the United States Circuit Court of Appeals sitting in Philadelphia. But since this chapter needs a happy ending, let's take the hard problems first, and use the Boss to wind it up.

Our inquiry here is into civil liberties in this country today and their chances for the future. In the chapter just before this I tried to make it plain that without economic liberty, there is no liberty at all.

We all want to associate with whom we please and to assemble for religious worship according to the dictates of our consciences or for any other lawful purpose. We want no blue-coats or Brown Shirts or private thugs entering our meetings or homes, beating us up or treating us in an arbitrary manner.

But if we are too poor to own any newspapers, radio stations, movie studios and theaters; if we are too poor to finance political campaigns to elect our representatives to school and university boards—too poor, in other words, to have access to any of the exceedingly expensive molders of public opinion, then our system of majority rule becomes in time almost meaningless. Economic liberty, I must repeat, is the basic issue.

Nevertheless, we do have in America constitutional liberty

guaranteed to all alike—to rich and poor, Jew and Gentile, reactionary and radical, Seventh Day Adventist, Protestant or Catholic, the stupid or the bright—everybody. "The right to express unpopular opinions and to hold unpopular meetings is of the essence of American liberty." *

Since the Supreme Court has held time after time that the Bill of Rights *does not* protect one if his rights are violated by a state or its subdivisions, the states and localities have obliged by committing widespread violation of the rights and liberties of their citizens from the day the Constitution was signed, to date. There have been denials of right of trial by jury, habeas corpus, the right of free speech, press and assembly; there have been "deportations" by cities and states, as well as illegal beatings and third degrees. The rights of citizens have gone either wholly or partially unprotected by either the state or the federal Courts.

Yet the Fourteenth Amendment, as we have already seen, was used to build up property rights under the due process clause. Although the people, when they adopted the Amendment, thought they were protecting the civil rights of *persons* only, corporations got the rights instead, and the Supreme Court has decided several times that "Trial by jury has never been affirmed to be a necessary requisite of due process of law." † (To this, Mr. Justice Stone made powerful dissent: "It would seem that the protection of private property is of more consequence than the protection of life and liberty of the citizen.") Hence it is possible for an American citizen to be sent to the penitentiary for a term of years without jury and with no relief from the Supreme Court of the United States.

As I have tried to emphasize several times before, the

* Brief of the Special Committee on the Bill of Rights, of the American Bar Association, as friends of the Court, in Frank Hague *vs.* C. I. O., American Civil Liberties Union and others, October, 1938. In the Federal Circuit Court of Appeals, Philadelphia.

† Maxwell *vs.* Dow, 176 N. S. 581 (1900).

Supreme Court has never recognized the Bill of Rights as applying to actions by states or individuals; it is only in the last few years that the Bill of Rights has even got favorable mention. Also I have placed emphasis on the fact that the Fourteenth Amendment was used to protect property, and that the recent protection of civil rights has been under this Amendment, not the Bill of Rights.

Under the due process clause of the Fourteenth Amendment, the Court has squarely protected the right of free speech and press when violated by a state. Freedom of assembly it likewise affirmed in the same manner as against states, in the famous De Jonge case,* although it did not make the right as clear as the right of free speech and press.

> *Although these rights are only a very few of the liberties we think we have, the Court's decisions marked a tremendous advance in liberty and human rights in America. They must be followed up in order that civil liberties may be expanded. The Bill of Rights must be eventually blanketed in our Constitution as against the state governments as well as the federal government.*

First of all, we must be able to get into court when our rights are violated. For that we've got to have additional legislation by Congress. In state cases it is now very difficult, and often quite impossible even, to get started in the federal Courts, much less ever get to the Supreme Court of the United States.

Let me explain this.

Recently a woman was charged under Georgia law with distributing circulars issued by "Jehovah's Witnesses" (a religious sect). Under an ordinance she was given her choice of a sentence of fifty days in jail or a fine of fifty dollars. The case reached the Supreme Court on appeal, and the Court

* De Jonge *vs.* Oregon, 299 U. S. 353, 57 Sup. Ct. 255.

—citing the old pre-Revolutionary abandonment of the "printer's License Law" in England, and by saying that it was in violation of the due process clause of the Fourteenth Amendment—held that she had been deprived of liberty of press. *The Georgia law was not held unconstitutional because of the violation of the American Bill of Rights, or because religious liberty had been violated.*

That means that if the woman in Georgia had not been convicted according to a Georgia law, but had been unofficially beaten up by the police, mobbed, and denied her liberties, THERE WOULD HAVE BEEN NO PROTECTION THROUGH THE FEDERAL COURTS because it would have been held a mere local crime and not the action of the state itself. It is possible that the Court will change this when it hands down a decision in the Hague case, because the Circuit Court of Appeals enjoined individual officials acting beside any law, from searches and seizures; violations of freedom of speech, press, assembly; deportations and the like. But it is certain that citizens are not now protected by federal law from violations of constitutional liberties by mobs.

Since jurisdictional questions are very complicated and long, I shall not discuss them here. But I believe that the key to the protection of civil rights is a protective federal statute, or a statute which provides access to the federal courts. Since the High Court's recent extension of liberty, we should make it possible for one deprived of liberties to get into court. Otherwise the great principles of liberty will be of no value, since over ninety-five percent of police actions are by state and local officers. It is in these ninety-five percent of the cases that we are deprived of our liberties, and that is where the protection is needed.

Congress, it seems to me, should pursue two courses:

First: Congress should enact a law for the protection of free speech, press, religion, and the right of assembly and petition, under the Fourteenth Amendment, and also either directly or

indirectly under the Bill of Rights, although the latter is not recognized by the Court as protecting the citizen against invasion by the states.

Since religious liberty is not now blanketed in, one might ask why this should be included. I simply believe the Supreme Court will be willing to step forward and blanket in religious liberty. Also, the Court would no doubt strengthen the other liberties included in the First Amendment, which have already been recognized under the Fourteenth Amendment. The statute to be enacted would provide for immediate injunction in federal courts if the liberties mentioned were being violated; penalties could be fixed.

Second: Congress should enact a law with teeth requiring all state officers to be bound by an oath to support the Constitution of the United States and the rights just enumerated above. There is a law now requiring an oath, but it means nothing, and no attention is paid to it. The law should be so written as to force the officers actually to observe the oath in practice.*

Part of Article VI of the Constitution reads:

> ". . . the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or affirmation, to support this Constitution; . . ."

Many lawyers say statutes are unnecessary, because the officers of the states are already bound by the Constitution. But Congress has made no effort to compel observance of this rule in practice.

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* State officers have many duties under the Constitution. See Article I, Section 3, paragraph 1; Section 4, paragraph 1; Section 10; Article II, Section 1, paragraph 2; Article III, Section 2, paragraph 2; Article IV, Sections 1 and 2; Article V; Article VI; Amendments XIII, XIV, XV, XVII, XIX.

However, these methods will be worthless unless backed by the unified public opinion of the American people.

I have inquired of hundreds of people over the country concerning their attitude toward the federal protection of liberties. Only a small majority favor the idea. Some oppose it because they don't want the rights of minorities in their localities protected—of Negroes in the South, of migratory and industrial workers in some states, of racial minorities in others. They don't want any "federal meddling"—a pre-Civil War idea. I was surprised to hear several labor lawyers say that if there were "federal interference," it would mean bringing out federal troops to settle strikes.

I can see no danger of breaking down local self-government *by protecting our rights under the Constitution.* The legislation should, of course, be carefully drawn in order not to create violent opposition. That is the reason that the bill should include only the simple protection of speech, press, religious worship, petition and assembly.

People can get together on at least that much. Those holding unpopular religious or political views can be certain of protection against state officials as well as federal officers, for such officials will be bound by the Constitution. Only if the various rights are not protected by the state officers will the federal officials offer protection, and then probably only under court order. People of various beliefs, victims of actual or imagined wrongs, can *assemble* and express themselves. They can petition, print papers and pamphlets without interference. This seems to me to be a minimum of ordinary justice.

And now about Boss Hague, still, in 1939, the Mayor of Jersey City, New Jersey.

In 1937-38 he prohibited free speech, assemblage, deported people out of his domain, and otherwise violated American liberties through the use of his police. Among those suffering

deprivations were the CIO and other unions, the American Civil Liberties Union, and various individuals. On constitutional and statutory grounds, the aggrieved parties got into court. Morris Ernst, the prominent New York lawyer, directed and led their fight. Although it is not relevant to the case, it is worth while to notice that Ernst is Jewish, and that in the protection of constitutional democracy and civil and religious liberties, Jews have always taken a large and leading part. At any rate, Morris Ernst deserves a large share of the credit for winning the case in the federal District Court.

Then Hague was stupid enough to appeal to the United States Circuit Court of Appeals in Philadelphia.

The American Bar Association, probably the most conservative organization in America, joined in on the side of the CIO and the Civil Liberties Union in the protection of civil liberties. It had never, as far as I can find out, done such a thing before. Most of its members had been too busy having state laws declared unconstitutional under the Fourteenth Amendment and attending to their heavy corporate duties. Their stand showed an attitude far in advance of that of the fifty-eight reactionary lawyers, most of them members of the American Bar Association, who had "declared" the National Labor Relations Act "unconstitutional."

Better late than never. The American Bar Association is welcomed as a friend of liberty—and I hereby dedicate this chapter to the organization upon condition that not less than one dozen of its fifty thousand members read the chapters on the Supreme Court, the Fourteenth Amendment, and Monopoly.

Those who drew up the Association's brief found little authority for protection of liberty by the Supreme Court—little because there has been (before 1925) ever so little. In fact, they frequently refer to the "modern doctrine of the Supreme Court" (with reference to protection of liberties). They vigorously assert "right of assembly . . . lies at the

foundation of our system of government . . . and . . . suppression of discussion leads directly to tyranny and loss of other rights." They then add that recent experience proves the necessity of a "constant process of open debate if free government is to function effectively in a democracy," adding that democracy *can* function only by means of free discussion.

It is pleasing to know that this extremely conservative organization has, after some sixty years of other activities, interested itself in preserving the Bill of Rights and the liberties of the people under the Fourteenth Amendment.

What the Supreme Court is going to do—is in the lap of the gods, I started to say. But if the Court continues what the Bar Association calls its *modern trend*—a trend created by public opinion—it will give its protection. To cinch it, all we need is still more public opinion in the support of liberties. The main purpose of protective legislation is to enable a person to get into a federal court when his liberties are violated, and once there, to provide a procedure that is simple and not costly.

One thing is certain: this is no plea for liberals, progressives, or "radicals," any more than for conservatives. It is for all Americans. For indeed, if Mayor Hague of Jersey can deport a man because he belongs to a labor union, Mayor McLevy of Bridgeport, or Mayor Hoan of Milwaukee, both Socialists, can deport a conservative because he belongs to a chamber of commerce or social club.

Thus as a matter of common sense, all the people, no matter what their viewpoint and no matter what their economic status, should insist upon the preservation of civil liberties. This is practical. It is sensible. It is, as a matter of fact, fair play, a means of protecting orderly government. It is one of the foundation stones of the American system—of our living constitution.

32

STRIKES AND VIOLENCE, OR PEACEFUL SETTLEMENT?

LABOR RELATIONS

Sit-down strikes thundered into America in 1937, producing great excitement and mental distress all over the nation. In the automobile industry alone, nearly 200,000 men "sat down" at one time.*

On the outside, on the picket lines, in clashes with police, many strikers were killed. (No police.) In a peaceful parade of unarmed workers across an open field near Chicago, eleven workers were shot, clubbed, and beaten to death by police.

All of this—the sit-down strikes, the violence—had a long and complicated background. Part of that background was that when the National Labor Relations Act was enacted by Congress and signed by the President, fifty-eight prominent corporation lawyers sat down in Washington and "declared" the Act "unconstitutional." One of the leaders suggested the employers should sit down on the law and not obey it; that was believed to be the considered opinion of all fifty-eight.

This is all very obvious—but getting back to disease again, everyone knows syphilis is not cured by beating tom-toms, talking of sin, or calling names. In the same manner labor unrest must be approached from the viewpoint of *cause* and not *effect.*

These lawyers represented, or were connected with, great

*The majority of sit-down strikes were CIO. However, the Bureau of Labor Statistics, Department of Labor ("Number of Sit-Downs in 1937," serial No. R-823), showed the American Federation of Labor involved in 101 sit-down strikes. One not reported by the Labor Department was that of the Willard Hotel kitchen workers (A. F. of L.) in Washington, D. C. (2 N. L. R. B. 1094).

banks and trust companies, the U. S. Chamber of Commerce, the National Association of Manufacturers, Standard Oil, Edison Electric, J. P. Morgan, the American Bar Association, the American Telephone and Telegraph, and most of the big financial interests of the country. They maintained that they were not representing these organizations when they offered their opinion, but their financial connections made their opinion as well as their ethics wide open to question. These self-appointed judges undertook to sit for the Supreme Court in advance, and they had a special personal interest in breaking down and demoralizing the enforcement of this law.

This invitation of fifty-eight lawyers to violate the law bore immediate fruit. Trouble started all over America. Over a hundred injunctions, either directly or indirectly involving millions of workers, were gotten out against the Labor Relations Board, generally prohibiting it from even mediating disputes. Peaceful settlement was paralyzed, and violence was a natural outcome.

Fighting fire with fire, Labor resorted to sit-down strikes. Then the Supreme Court met and floored the fifty-eight big lawyers by sitting down on them. They declared the Labor Act constitutional.

What made the labor situation still more spectacular was the split of the organized labor movement into the American Federation of Labor and the Committee for Industrial Organization (now the Congress of Industrial Organizations).

The census of 1930 revealed that four out of five Americans worked for wages or salaries. Approximately one out of five Americans (the eight million trade-unionists and their dependents) is identified with organized labor. By and large, the American people have become workers.

Now people who work for other people demand that they have something to say with their employers about determining fair wages, hours and conditions of labor. To balance the em-

ployers' power to fire, the workers have only the power to withhold their labor—to strike.

Not so long ago any strike was illegal in America, but as more and more people were forced by industrial development to become workers, they won legality for the strike. It is now a part of our system.

Of course, many still believe any kind of a strike is "un-American," somehow illegal—that an American worker should suffer in silence. Many more believe that the sit-down strike is not only "un-American" but a major and violent crime. The truth is that the common law for centuries held trespass of property a misdemeanor; and the sit-down strike is trespass of property. In 1939, almost two years after the sit-downs had ceased, the Supreme Court held them illegal.

The strike is a *symptom,* not a *cause,* of labor unrest. Ignorant doctors once cauterized sores, seeking to cure the disease. But as science advanced and internal medicine became better understood, doctors cured from the *inside of the body* and really got at the cause, instead of burning or scraping the sore from the outside. Let's approach the question, then, from a factual viewpoint, a viewpoint similar to medical diagnosis, with an effort to get at the cause of the industrial disease.

Now, human rights have advanced slowly, but have been won by ever broader and more inclusive sections of the people. Greece and Rome, from a viewpoint of literature and culture, were in some respects superior to us today. But their economy was based on slave labor. And it was as only yesterday that in a large portion of our own country, the principal industry, namely planting, was based on black slavery, as brutal as that of Greece or Rome.

In the Middle Ages, feudalism, a form of society based on the land-monopoly of the nobles who lived off the forced labor of serfs attached to the land, gripped all of Europe. America was discovered with its gold, its great fertile lands, and its unheard-of resources. Exploration and colonization began.

Great enterprises sent ships to sail the seven seas. Joint stock companies came—one of our first social discoveries. Corporations developed.

Feudalism was practically wiped out and capitalism took its place. Capitalism represented a great advance in many ways. But with the industrial revolution and its huge concentration of population in the cities, came the problem of labor. And as long as men improve machinery, as long as they experiment, make new inventions, and find new methods, the industrial revolution will not stop. Some of its effects will necessarily be profound, if not violent.

In the early days of the machine the workers came from the wretched, oppressed peasants and artisans. For centuries they and their forebears had been forced to live by endless grinding labor with no chance to escape their brutalizing lot of ignorance and poverty. As factory and mill hands their plight was, if anything, even worse. The history of early industrial exploitation forms one of the blackest pages in all history. But gradually the number of workers grew. Gradually they won better working and living conditions.

Even I can remember when railroad men were not considered respectable by "superior persons," but as ignorant, dirty radicals. They committed violence, stopped trains. Railroads blacklisted them by the thousands. But now railroad men are considered very nice, conservative fellows—because boards of mediation have been established, because railroad men are well-organized, and because *they have* (as well as the railroads) *the protection of the federal Courts of the United States.*

I can remember a few years ago when people referred generally to all members of the American Federation of Labor as "Communists," radicals, men designing to overthrow the government of the United States. That was false then, as it is now.

We Americans sometimes forget that practically all our labor history has been marked by violent and bloody conflicts. There

has been violence on both sides. There has been racketeering and crookedness on both sides. There has been a deprivation of civil liberties of the workers, too, on a large scale.

In the Homestead strike in 1892, in the Ludlow Coal strike in 1914, we saw the ruthless crushing of employees who were fighting only for decent labor conditions and fair wages, so they could live with some dignity as Americans. On the other hand, we saw the dynamiting of the *Los Angeles Times,* for which members of the American Federation of Labor, the McNamara brothers, were given life imprisonment for their extraordinarily bloody and property-destroying crime.

I am offering no excuse for violence. It has never paid. When violence comes, just as when war comes, both sides lose in fact, no matter who wins in theory. In Colorado, after the 1914-1915 coal troubles, the state had to issue "Riot Bonds" to pay for the suppression of strikes by the National Guard—and the taxpayers are still paying on them, this year of our Lord, 1939. It has been factually determined that had all the demands of the strikers been met, it would have cost much less in cash, and both the workers and the coal companies would have been better off. In the end, the strikers won anyhow, and got recognition.

> *Thus the sensible thing is to build up methods of mediation for all types of labor. With such outstanding success with rail labor, the spirit of mediation can be extended to all labor. That should be the goal of all Americans.*

It is well to understand the different types of unions. Rail unions are principally organized to themselves, and have no connection with either the CIO or the AF of L. The "Four Brotherhoods" are the backbone of rail labor, although there are several rail "shop crafts" affiliated with the American Federation of Labor.

The American Federation of Labor is organized mainly, but

not entirely, on the basis of crafts; the Congress of Industrial Organizations on an industrial or "vertical" basis. Both kinds of union have a field. The craft union can roughly be defined as an organization of skilled laborers confined to a single craft, such as carpenters, plasterers, hod-carriers, bricklayers, and some seventy or eighty more. The industrial union is an organization of the skilled and unskilled in a single industry—all the workers, whatever their craft, "in and around the plant."

What are the aims of labor organizations? Briefly they are to secure decent wages and hours, safety, health, security, job continuity (in some, annual income), overtime pay for Sundays and holidays and for objectionable and night work; abolition of child labor, the sweat shop, stretch-out, spies; the protection of civil liberties as provided in the Constitution—these are only a few of the manifold interests vitally affecting the organized workers.

And considering the wretched conditions of labor in the years past, no one will say that labor has not immeasurably improved itself. In fact, the improvement of labor has helped the whole nation, has helped business, American living conditions, morality and religion.

The charge is often made that unions are "communist led," that they are radical and so on. As much as any man in America, I have had an opportunity to meet the rank and file of workers in meetings, in private conversations, and as a trusted guest in their homes, where they did not fail to express themselves fully on all subjects. I found they had the same things in their homes as all Americans—radios, funny papers, books on all subjects, including poetry, Bibles, pictures of their mothers and fathers. They also had actual wives and children. These wicked fellows occasionally had beer in their homes—and their wives lectured on the evil of drink. The children had home work from school, and their fathers could not work their geometry problems.

Very few Americans workers are opposed to the capitalist system. Practically all of them look with hope to becoming little capitalists themselves by laying up some money in the savings bank. They want their children to have more opportunity than they did. They want to send them to the great American universities.

Typical, that's all—just the same as every other American—believing in liberty, trying to make a living. Patriotic, too, and ready to defend their democratic America if the need arises.

So when I hear this radicalism talk, this talk of good Americans being Communists because they love their wives and children and demand to live as free-born Americans should, I get sick at the stomach. Investigation shows they belong to the same lodges, political parties, churches, as all other Americans, and think very much like everybody else.

There is something the members of unions have done recently which is an improvement, too. Starting some twenty years ago, many unions—like the garment workers, miners, railroaders—have developed a sort of business technique. No bums lie around union headquarters full of beer. Instead, there are neat offices with statisticians, lawyers, economists, and management experts who handle the unions' business.

They have copied the businessman!

No unions have said they want to displace the capitalist system, or have made efforts to break it down. All that they have ever done is to deny to employers absolute control over wages, hours, and working conditions. All honest unions have attempted at all times to improve those conditions, as they should.

Ah, someone says, but you are making a labor speech! Isn't business entitled to its rights? Hasn't labor gone too far? My answer is, *yes, business is entitled to its rights*—and labor *has* gone too far, now and then. Business should make a profit, yes sure! But the four out of five Americans who work for some-

one else have no stake in the land except their jobs. A four-fifths majority has the democratic right and power to secure and protect that minimum stake. As unions become more enlightened, and as the policy of mediation and peaceful solution of disputes progresses, unions will become a great asset to American business that is engaged in *business* and not trying to break up unions.

This matter of labor is one phase of the conservation of human resources. If we can think and use our heads, the thrill of modern science, of intelligent cooperation, of peaceful settlement of problems, will bring us good *new,* and not good "old" days, and times will be more romantic, more prosperous, and happier.

33

DUST, WATER, MINERALS— A NATIONAL CONCEPT

CONSERVATION OF NATURAL RESOURCES

> The Lord thy God bringeth thee into a good land, a land of brooks of water, of fountains and depths that spring out of valleys and hills;
>
> A land of wheat, and barley, and vines, and fig trees, and pomegranates; a land of olive oil and honey;
>
> A land wherein thou shalt eat bread without scarceness, thou shalt not lack any thing in it; a land whose stones are iron, and out of whose hills thou mayest dig brass.
>
> *Deuteronomy 8, 7-9.*
>
> Understand . . . that the Lord thy God giveth thee not this good land to possess it for thy righteousness; for thou art a stiff necked people.
>
> *Deuteronomy 9, 6.*

In the Old Testament there are long warnings of punishments to be visited upon the people for not keeping the commandments of the Lord. We, likewise, shall certainly suffer punishments determined by nature if we fail to keep the commandments of the true law of the land. As I said earlier in this book, to be prosperous and free, a people must possess a rich productive land.

While a judge is ordering soil to wash against the law of gravitation and local prices to survive against a national market (as in the Agricultural Adjustment case), the actual soil is

washing away, and the state, also, is crumbling at the same time. The constitution of our Soil is eroding while legal Joshuas are ordering the sun to stand still.

Judges have filled long shelves of books with the "Law of the Land," *their* law of the land. These books in their morocco bindings are like little tombstones in a cemetery of dead words. Too little have We the People followed the meaning of *soil itself,* too little have we studied the true Law of the Land in modern scientific terms.

Today in America there is a Soil Conservation Service, Department of Agriculture, with Dr. H. H. Bennett, a modern scientific prophet at its head, and with hundreds of devoted and scientifically trained men actually working to save America. The Soil Conservation projects cover the whole face of our continent; they are eloquent evidence that our government is at least keeping some of the commandments of the real Law of the Land.

The commandments are clear: The people shall preserve the land or be destroyed. More, there shall be plowing on contours, and there shall be strip-cropping, and terracing, and the making of check-dams; and the people of America shall do all manner of things to prevent their being blown up in the storms of dust, or washed away in floods, and being plagued by sickness, hunger, poverty and disease.

The greatest of all projects to conserve natural resources is the Tennessee Valley Authority. It is not a mere job of selling electricity. It embodies numerous functions *which can be performed by the government* only. They include soil and water conservation, provision of farming techniques necessary in a congested country, reforestation, the production of fertilizer, the construction of navigable routes, and many other functions designed to preserve and improve the land. In private business these necessary activities cannot be carried on, owing to the nature of private business. Thus if the government proceeds to accomplish these essential duties, and in doing so has

the water to make power, it should certainly use the people's own water to help pay off the people's own investment.

> *Instead of stopping at one TVA, we should regionalize the whole nation for the purpose of protecting drainage areas. Thus we could save all the nation's resources, rather than the portions of six or seven states which are included in the TVA.*

"But," says someone who is misguided or perhaps interested in wasting a natural resource for private profit, "this is paternalism, socialism, unconstitutional!" Such talk is, of course, nonsense. For surely, if we have a Constitution which is alive—if we as a people have a right to live—we have a right to keep life in our land and to share in its bounties.

We have the right, moreover, under the most rigid interpretation of the written Constitution, to do all these things. The forces of water and air and earth are interstate, not local.

Land is a kind of investment of the people. According to national income figures, land is not well distributed. But all citizens, whether they have enough, or too little, should unite in conserving it for the present and future. In a progressive society rights in the land will be enjoyed by more and more people, and we should preserve it for that reason if for no other. We can at least leave our descendants a fertile and well-preserved land, and if they have sense enough, they can make a living out of it.

Now about this land. When the top soil washes away, the interest on the investment is being lost, thrown away. And when it is all gone, the investment is gone. But let us also think of land and resource loss as loss of bread, meat, oil, lumber, medicine, automobiles, paint—everything—for it is on and from the land that we live.

Fertile lands by the millions of tons wash down to the sea. Standing at Vicksburg, *you can see a forty-acre farm wash*

by every single minute. Other forty-acre farms are washing in other rivers down into the Atlantic and Pacific. Of our two-billion acres in continental America, some half have been affected by erosion. Much of the land is partially or entirely ruined. We use four hundred millions of acres in farming. Fifty million acres have been destroyed forever, and can never again be put to agricultural use. Fifty more are sub-marginal —little patches planted in the skeleton of gullies from which farmers try to eke out a meager existence.

In money, we lose four hundred million to a half-billion dollars worth of soil every year. Of this soil, the most sacred of property, we have lost forever some twenty or twenty-five billion dollars in values. We have also lost production upon it forever. In other words, if it is the duty of government to preserve property, the government has not been doing it. This land must surely be *property,* as much, I am sure, as stocks and bonds and money on Wall Street. More—

> *When someone begins to bellow about titles and ownership, he ought to remember that erosion is no respecter of individual rights, "constitutional" rights, or property rights, call them what you will. Freedom, well-being, life itself depends upon our checking erosion no matter how formidable the barriers of artificial state lines, selfish interests, ignorance, stupidity, or legalistic taboos.*

Erosion spreads ever more rapidly like a contagious disease, but fortunately we can see its deathly creep before our eyes. As the land cancer spreads, everybody loses—farmer and city resident alike. Erosion robs the people of production. It robs them in the costs of highways, bridges, culverts and dams. It makes floods more and more destructive each year. It kills the fish and wild life.

So let us keep in mind the injunction the Lord gave the

people of Judea. We had better not get too stiff-necked and self-righteous because we have been fortunate enough to inherit miles and miles of rich and fertile land.

Suppose for a moment we climb into our great steel bird of twenty-one seats, and rise high above America. We leave the Newark Airport. We see great industries eating resources from the bowels of the earth. In between there are tens of thousands of farms slowly deteriorating, although we do see some plowing on contours, under supervision of the Soil Conservation Service of the United States. Through Virginia and the Carolinas we see hills and mountains and long, terrifying gullies. We see land, some of which was destroyed by tobacco even before the Revolution.

We fly on south; in Georgia we see brutal red clay hills, where gentle lands were once black and fertile from the annual fall of leaves. In Alabama, the land is a grayish or reddish color like the face of a sick, under-nourished man. Cotton lands have been washed down to the sea, and are no longer fertile. As we cross these states, we realize more clearly than ever that artificial boundaries have no relationship to land and water.

Over Oklahoma and Texas, we remember that when the dust storms came, they blacked out the sun even over Washington, where one could hardly distinguish the dome of the National Capitol. Then on to New Mexico and Arizona with their twenty or thirty million acres ruined by over-grazing—glassy, barren lands, glittering and dead in the sun.

In California we see geometric farming areas, the designs of real estate booms, laid out with no planned scientific attention to soil conditions. And if we continued our trip over the country, we would see thousands of gas wells burning and wasting hundreds of billions of cubic feet, a forest fire every three minutes, dozens of problems of elevations, drains, dust, types of land, roads, dams, bridges, types of vegetation—all pointing out the positive necessity of a single land policy.

We can come to no other conclusion: there must be a general,

central, national policy, a real law of the land, a unified idea, an American concept of saving the land, forests and waters of our huge continent.

Whether it be accomplished by the federal Government or the states, or both, makes no difference. The unified policy must be followed. There is no way of getting around this, if we have any respect for ourselves, or any hope for future generations.

America can be saved and restored. The destruction can be stopped. That is the job of all Americans, irrespective of party or political inclination. On the duty of saving our land there can be no division among patriotic men and women.

Let us, therefore, keep our land as we would the House of the Lord. But the people must have not only land; they must have houses in which to live, and that is our next job.

34

ROADS WERE ONCE EVIL

Decent Housing for the Millions

Yes, what about housing for all the people of America?

Or better, homes to live in? *Housing* has an impersonal sound. It suggests cattle sheds. However, I suppose I shall have to use the word, although I hope you will think in terms of *homes for human beings in America,* built on the continent we have resolved to save.

Forget the humanitarian slant for a while. Think of housing as a business proposition that affects everyone.

Over a third of the housing in America is below a fairly decent standard, and much of that third is intolerable. This housing is dangerous, unsanitary, *and injuriously affects the health and well-being of the other two-thirds.*

Therefore, for the sake of the health, happiness and living standards of *all the people,* we need a nation-wide housing operation.

Much of our medium-class and even better-class housing is antiquated and sadly in need of repair and improvement, but such housing is palatial compared to the millions of slums.

Slums are by no means limited to a few large industrial cities of the North. Every small town and village has its slum and its ramshackle shanties. Throughout the nation are what amount to ghettos of the worst sort—slum areas in which a racial minority is crowded together in poverty, isolated by its limited means and by its particular race or language. Countless Negro slums exist not only throughout the South, but in the big cities of the North. In my own city of San Antonio is a grand and glorious and terrifying slum inhabited by Mexican-Americans.

I once spoke to a friend of mine in a great southern city about slums. He said his town had none. I pointed out the enormous Negro slum in his city. "Oh, you mean those nigger shacks," he said. Many people in northern cities have the same attitude.

While the United States of America is the wealthiest nation on earth with the highest living standard, there are many millions in America whose housing and living standards are lower than the lowest of Europe—lower even than that of the notorious slums and poverty of Poland and Bulgaria. And if we compare our general standards of housing, conservation, and cooperative endeavor with those of the Scandinavian countries, we come off a rather poor second. In these matters we are probably second to some other European countries as well.

People in our country have talked a good deal about housing, but have accomplished comparatively little. Whenever we have begun a building boom, prices of building materials have jumped to the moon, and labor troubles have appeared.

But various departments of the government have made a beginning and now possess the accumulated experience for a real job on a big scale whenever the American people decide to go ahead. The PWA did many well-constructed big jobs in cities. Rural Resettlement built three "Greenbelt Towns"—near Washington, Cincinnati, Milwaukee—and set up numerous rural projects all over the country. The Federal Housing Authority has aided private building.

The United States Housing Authority now has the power to operate in the low-cost, or slum-clearance field, if communities help. But its operations are too slow and too dependent upon local cooperation ever to succeed on a large scale.

The government is ready to go ahead. But the bankers, the builders, the contractors, the building-material merchants and the local governments are very emphatically opposed. They have succeeded in winning many of the people themselves to the

opposition. Witness their successful organizing of great mass meetings of people to protest slum clearance.

Businessmen in general apparently believe that a program either paid for or subsidized by the government will hurt them. Hence, no big building program. Instead, little fits and spurts of programs that always fizzle out.

Less than a hundred years ago, many intelligent and wealthy people, many great political leaders, opposed any extensive public road building. They insisted that roads be toll roads, built and operated for private profit. They argued that public toll corporations would go broke, that the state would lose taxes, that slaves would escape, that free roads would be filled with lazy and trifling people.

This prejudice against road building was widespread. It lasted until a few years ago.

But now the building of roads and highways and bridges with federal as well as state money is accepted and welcomed by all. Billions have been spent by the federal government, and everybody, conservative and liberal alike, approves. Our roads, national and state, are worth thirty or forty billion dollars.

Highways were built rapidly after the automobiles came in. The automobile manufacturers promoted good roads with a deep zest—an almost holy zest. So did the cement, steel, rock, and other sellers of materials. It looked profitable to them—and naturally constitutional.

Well, you know what happened. The government entered the highway business. The people got automobiles to ride *in,* and roads to ride *on.* The automobiles became cheaper and better, and the roads safer and better. And how was it done? The government *subsidized the automobile business.* It thereby made it possible for Ford, Chrysler, Olds and dozens of others to become multimillionaires. But that was all right; because millions got jobs, not just in building roads and automobiles, but in working in nearly every industry in America.

The American people need housing, much more than they

needed roads. Yet even more than they need housing, they need jobs—jobs which a *new industry* would provide.

In the days of President Hoover, when conditions were rapidly getting worse, Alfred P. Sloan, king-bee of the General Motors Corporation, said: "What capital and labor both need at this pass is the birth of a new industry which, like the automobile industry of twenty-five years ago, will grow swiftly into large production with direct beneficial effect on wages, investment values and living conditions. . . . One new industry that seems to meet the requirements is the manufacture and assembly of machine-made homes."

Whether the homes should be machine-made or not, I do not know; I do know that prefabrication will necessarily be a large part of the program. The idea is to *get going* in housing, as the nation did in automobiles. There are now twenty-five million automobiles as compared to the fifteen thousand when roads were bad. And there was but one thing which could have produced this great advance:

Federal subsidy.

Federal subsidy and the vitality, the integrity, skill, and unity of purpose of the Government of the United States of America.

Then why not subsidize housing on a grand scale? The only reason is that we still have a log-cabin psychology, even though we have abandoned our county road complex and think in continental terms, of concrete four-lane highways, and of driving in our own car from Maine to Texas and California and back home on the northern route without even hitting a mudhole, a bump, or crack, or being inconvenienced by blizzard, rain or storm.

> *If housing is ever to start, the same great national idea must be in the minds of the people before there can be any success.*

If the government can start housing going, numerous industries will get back on their feet. Millions will go to work

throughout the whole fabric of our society. And millions will get real homes in which to live.

Billions of dollars in housing—billions and billions are needed. Not tens or hundreds of millions. Billions. Therefore, the government subsidy might run a billion or two dollars a year, or even more. Government expenditures for relief and other purposes have not been wasted in recent years, but far more of a substantial, constructive nature can be accomplished by a housing program. It will be money well spent—an investment that will pay for itself.

Opposition to this program can be expected from finance groups. They can be offered the opportunity to finance the operations; if they do not, the government should do it. However in England, when the government *started* a big campaign, business and capital entered the scene and offered to do the financing.

One thing is sure. The great industries would be the first to benefit. Production would boom.

The new building industry would be like the automobile industry. It would be started by a subsidy and, for all I know, partially kept by a subsidy as the automobile industry is kept, but it would put people in homes, give work to millions, and start business rolling merrily along.

35

THE THIRD FORM OF GOVERNMENT

Monopoly: Private Collectivism

Bitterly tragic is the fact that many businessmen often denounce the real friends of democracy and of honest capitalism as "communists," when they themselves are being destroyed by concentrated finance, big business and monopoly—a concentration of wealth that is itself private collectivism.

Every Marxist has been taught that this ruthless concentration of wealth and centralization of economic power will be the destruction of private capitalism. When monopoly and the concentration of wealth becomes intolerable, they say, socialization of wealth—of the concentrated means of production, that is—becomes the only solution.

In any event, monopoly is at the heart of every American problem. Historically, monopolies were exclusive privileges granted outright by the King. Throughout history the people have regarded them as curses because they excluded the people from much of the richest land and its fruits. Many tried to have monopolies forbidden in our written Constitution.

Business and industry have assumed radically new proportions and characteristics. I have fished around among the economists for a definition of these new developments, but I find them getting all tangled up because monopolies no longer extend to a single commodity only. Individual firms now have monopolies of several commodities and dominate one or more markets. So economists are inventing new words like "duopoly," "tripoly" and "oligopoly." And now Leon Henderson, formerly Executive Secretary of the 1938-1939 Monopoly Committee in Washington and now a member of the Securities and Exchange

Commission, says that if you don't watch out the oligopoly will get you just like a monopoly.

As for me, economists can call them gollywopolies if they want to. All I am interested in is preserving and extending true democracy, which I have defined as being able to talk, pray and think as you please, and to "eat regular." But for the sake of getting started, I should like to define a monopoly as a corporation which has such a degree of control over men, money, land and its products, that it can deny democratic rights to individual citizens. The control is not merely of a certain business field, but of many apparently unrelated activities in our organized society. Or, to put it another way, a monopoly is any big and powerful business combine which holds such a dominant position that it not only ceases to be more or less subject to the ordinary controls of society, but actually begins to take over those controls.

It is now abundantly evident that these organizations are becoming fewer in number and more gigantic in size. This argues against the theory that man is always getting a greater share of land and wealth as time goes on. And the story of the wide distribution of their stocks in any substantial amounts among the American people is just not so. More and more stock is getting into the hands of fewer and fewer people. In 1935, forty-three stockholders of the American Telephone and Telegraph Company owned over 250,000 shares more than the combined holdings of a quarter of a million people classified as small stockholders. Only 3.28 per cent of the American people filed income taxes in 1929. And that 3.28 per cent received 83 per cent of *all* dividends paid to individuals by corporations. Nearly all of that went to individuals with incomes of $10,000 or more per year.

Hold on just a moment—these figures are important and I have about a quarter-page more of them. Internal Revenue Department figures show that of corporations reporting in 1932, 5 per cent of the stockholders owned 85 per cent of their

wealth, while by 1935, the same 5 per cent owned 87 per cent of the wealth. In the hearings before the Monopoly Committee (1938-1939), Dr. Willard Thorp showed from official figures that 780 firms, or .2 per cent (not 2 per cent, but two-tenths of 1 per cent), each had assets of over $50,000,000, and that this proportionally small number of American corporations holds 52 per cent of the total assets of *all* corporations.

Because decisions of the Supreme Court under the "due process of law" clauses have exempted corporations from various controls of government, both state and federal, some of these monopolies have become in effect a *third form of government,* or a *series of third forms of government* independent of the United States government and individual state governments.

The trouble with this third form of government is that the people have no control whatever over it; it becomes in effect independent of the constitution of the people. A few of the big fellows get together and tell us, as consumers, how much we shall pay for meat, steel, aluminum, liquor, and numerous other commodities. This is certainly exercising the powers of government and without any responsibility for the welfare of the governed. Even a fascist government takes into some consideration the effect of the price upon the citizen or consumer. If it does not feed its people, it eventually falls.

> *The price which a monopolist charges the consumer is, after you subtract his costs plus a reasonable profit,* nothing more or less than a tax.

It is *taxation without representation,* which our forefathers regarded as unconstitutional enough to warrant a revolt against the British Government. Some industries call this third form of government "self-government in industry." Actually it is anarchy—separate government without reference to the *sovereign* government of the people. Although there are occasional examples of intelligent "self-government," they are

nevertheless independent of the public or consumer, the employee, and quite often the stockholder.

Of history-making importance, therefore, was the President's message of April 29, 1938, in which he bluntly called attention to the gigantic concentration of economic power. He emphasized the fact that this concentration was breaking down private enterprise as a method of providing capital and employment. It was a studious and scholarly message on which he had spent many months. He suggested a joint committee—to be made up of members of both houses of Congress, together with prominent government officials—to investigate and propose legislation.

Congress created the committee, and it is now functioning. On the committee is a representative group of men, most of them conservatives. They have the ablest group of advisers I have ever known to serve on a congressional committee.

The Executive Secretary was Leon Henderson, distinguished economist, whom I have already mentioned. In an opening statement, he outlined the proposed scope of the committee's work. He said that the American system had emphasized the dignity of the *individual* and his resourcefulness. He pointed out the serious problems of modern civilization, and said the "overall question seems to be, 'Why have we not had full employment and full utilization of our natural resources?'" The Committee, he continued, was faced with one extremely important question: the problem of excess savings over new investment and capacity to produce.

He asked numerous questions that Americans must answer. Among them: "Can the country rely on unregulated competition alone? How can competition be made effective? Is the choice between full competition and full planning?" Then he submitted the following: "Can economic effort be divided into monopoly and competition?" and "What part has concentration [of economic power and wealth] played in the decline of competition?"

This beginning seems to be sound; it must be followed up and encouraged by the American public at large. For the situation today has become critical. Of course in the beginning of our history people didn't have to worry much about monopoly. If you went broke or needed food, you could move west and take up some free lands. In that way you could get out of the way of monopolies. But now monopolies are all over us, under us, and in between us. Therefore, we have the problem of whether the people are going to let the great corporations, big businesses and monopolies control them, or whether the people are going to do the controlling.

In fact, we must understand that monopoly has a wider social significance than anyone realizes. We must also realize that it is anti-democratic—against the grain of the individualism which is supposed to be so predominant in this country. Our entire American system is built on the dignity and the importance of the individual; monopoly drives men toward slavery once more. As I have said throughout this book, the constitution of groceries has, and ought to have, a first call on men's affections. That's the answer to Monopoly.

Monopoly has some of the attributes of a toll bridge. It tells you how cheap the toll is and the miles you save by taking the bridge route. But when the cost of the monopolist's bridge is paid off, he keeps charging the toll. A monopoly does not have to pass on the savings to its consumers. Certainly, if monopoly is "left alone" it is not going to reduce its prices to consumers.

Therefore, it is apparent to me that if a unit or units of monopoly can determine prices and direct the daily lives of millions, the people through their government at the very least should see that the public's interest is protected. I have often heard business referred to as a "game." If so, there ought to be some rules, and an umpire.

It is useless to say that government should not regulate or control. The government has always done so to some extent, especially whenever a business has been "affected with a public

interest." *Neither private business nor government bureaucracy should be free to do as it pleases.* The people should always have something to say about how things are going to be done. That is the reason we have laws—to express the will of the community.

In this modern world we might as well admit we have monopolies that control prices, businesses so large that it is difficult for the human mind to grasp their complexity. Monopoly is, among other things, organized, centralized efficiency in machine production. It saves labor. But it must be made to save the labor of all men—not throw millions of them out of work.

It is silly to talk of *destroying* big business and monopoly. We need monopolies such as the Post Office and other government monopolies; we need big business concerns in glass, power, aluminum, steel, transportation, automobiles, and other general industries. But these big concerns should be conducted in harmony with the national economy, the rights of consumers, workers, and competing interests.

> *All real monopolies should be owned, controlled, or effectively regulated by the people through their government.*

The hearings on the glass industry in December of 1938 before the Monopoly Committee made pretty clear the inner workings of a monopoly. Amazing testimony out of the mouths and papers of the glass monopolists led Senator O'Mahoney and other members of the Committee to remark that "this looks like a private NRA. . . . Why! you have a private tariff system of your own. . . . What you are doing is issuing private certificates of convenience and necessity." The glass patents' private monopoly, without any government regulation whatever, has the power today to say whether you can go into the

glass business or not, what kinds of ware you can make, how much you can make, what territory you can sell in, and the power to cut you off if you cut prices trying to increase your business.

Glass is only one of the many industries that have set up such private dictatorships.

But, I repeat, it is ridiculous to speak of breaking up big business and monopolies. To talk of trust-busting sprees and a return to village arts and crafts is pure moonshine and foolish hope. In this question as well as others, it is up to the people, through their government, to cope intelligently with their serious national problems.

I frequently hear people criticize the government for limiting agricultural production. At the same time, the big businesses of America drastically limit production, laying men off their jobs by the millions. We cannot expect the government to permit great business combines and more or less monopolistic concerns to cut production and employment, and keep up their prices, and then expect farmers to produce unlimited crops below the cost of production.

What I am trying to emphasize is that the great monopolies and combinations have an effect on the entire economy of the nation, and that all monopolies, private or governmental, must be subjected to some kind of regulation that will keep them running at full speed.

Then we can abandon the scarcity economy and produce enough for everyone to eat and wear—and what is more, enough to put everybody to work. When that day comes, there will be more combinations instead of fewer, but there will not be as many combinations *in restraint of trade.* It all gets back to the thing I have repeated several times and that is: there is nothing wrong with big business or monopoly *as such,* but the

people must use their government to make sure that monopolies are producing and distributing wealth and not gypping the people.

Our job in America is to foster certain types of big business and monopoly, but to do so with a people's government, having control over their operations. Our job in America is not simply to foster the use of machinery, great assembly lines, modern industrial techniques, great discoveries and labor-saving devices, but to make all these modern things the slaves of man instead of making man the slave of them. We need not fool ourselves about going back to the "good old days" when each person had a cow and could hunt rabbits in his own back yard. We have modern times upon us, fast machines and great discoveries. If we can comprehend this, we can make life more beautiful, less painful, and fairer than it has ever been before.

36

CHECKS, BLOCKS AND TACKLES OF GOVERNMENT

Our Ineffective Government

The paramount problem of our time has been described as that of increasing the efficiency of government without inviting tyranny. Hessler, in "Our Ineffective State."

Do the American people want effective government? Do they want a powerful government?

Superficially, no. Many Americans are so scared of *powerful* government that they are afraid to accept an *effective* government that will really do the job.

This is the historical fear of "centralization of power" which is called "dictatorship" today.

But it is substantially true that Americans really do want *effective* government. They want it strong enough to protect life, liberty and property. *Americans also want a government which keeps the economic processes going, and which makes it possible for every man to have a job if he is willing to work.* Besides that, Americans want peace and adequate "common defense" as provided for in our Constitution.

In the face of a growing number of serious needs today, our government—federal, state and local—is falling short. Many state governments are hopelessly inefficient both from the viewpoint of government policy and ordinary administration. Many cities in America are still run by the old crooked political machines.

The state and local situations can be corrected by the local citizens and by them alone. Efficient state and local government

will make the general job of government easier of accomplishment and less costly. In addition, if in this field persons of courage and integrity are drawn into the public service, more and more persons will be trained for efficient government service in the federal field.

But our interest here is chiefly in the United States government. Although the federal government is generally far more efficient and effective than state and local government, it can become still more efficient, and very much more effective.

Confining myself to the federal government, I want to discuss this matter of efficiency as it affects our daily lives.

We need some changes in our constitutional practices, but *none in our Constitution.* We have in our written Constitution all the constitutional authority necessary for effective government. We need no amendments; *our Constitution is all right.* Constitutional government *grows,* anyhow. As people learn more about their government, as they develop ideas and create public opinion, they begin to expect and demand that executive, legislative, and judicial authorities actually do what the majority of the people want done. They grow sick of branches of government blocking, tackling, and checking each other. And this growth of intelligent public opinion makes for honest democratic and efficient government.

As we all know, the blocking and tackling goes on among our three branches of government. A bill must pass two houses; having passed, it must hurdle the Presidential veto. Duly enacted, it may stay on the books for from a year to fifty years, and then be declared "unconstitutional," because five out of the nine judges may not like the law, or because some single judge has changed his mind.

All-American honors for blocking and tackling must go to the Supreme Court. In the period preceding the Civil War, Chief Justice Taney, at least in the latter part of his career, built up the *judicial* power, as against the executive and legislative power, in order to protect and enrich the slaveholders.

From about ten years before the Spanish War through the Hoover administration, various justices again built the *judicial* power—this time as against both national and state power to govern, in order to strengthen corporate and private finance. It was in this period that great corporations and monopolies became practically independent governments.

Consequently, as I pointed out in a previous chapter, many now believe that the Supreme Court is actually supposed to be *supreme* over the other branches of government. This is neither constitutionally true, nor is it a democratic way of government.

The Supreme Court itself should abandon the practice of functioning as a Super-Legislature and a Super-President. It should itself withdraw from the field rightly belonging to Congress, whose members are the constitutionally elected representatives of the people. If the High Court does not do so, the people must require it. All that is needed is unified public opinion.

If the Supreme Court will, of its own accord, merely follow its own rulings and not interfere with Congress except when Congress does violate the Constitution beyond "all reasonable doubt," government will be more effective, and the country will not be repeatedly torn by conflicts over the judiciary. It should itself consider more cases concerning human rights, especially at a time of hysteria, red-hunts, and invasions of civil liberties throughout the country. In that way it would become a Supreme Court of *Justice,* which it is supposed to be.

Concerning the Supreme Court acting as a super-legislature, Hessler says in *Our Ineffective State:* "Its equipment for such a task is faulty, not only because it is unrepresentative of public opinion and not responsible to it, but because the background of a learned lawyer is not one calculated to enable its possessor to weigh the changing needs of a dynamic, industrial society . . . the court is not equipped to maintain a progressive constitution in step with a progressive society."

It must be borne in mind *that the Supreme Court has never*

declared an act of Congress unconstitutional on the ground that it directly violated the Bill of Rights or the personal liberties of the people. Just before Jefferson's time, during the Adams administration, the country was plagued by the notorious Alien and Sedition Acts, but the people got no relief at the hands of the federal courts. Only when Jefferson came in, did he, as President of the United States, declare the Acts unconstitutional. All he said of the Sedition Act was this: "It is unconstitutional, and I shall not enforce it." The various acts of Congress which either interfered with freedom of speech or press or came dangerously near it, *have all been declared constitutional by the Supreme Court.*

That is the reason I say the High Court should be a Super Court of Justice, not a Super-Legislature. It should unhesitatingly find acts of Congress unconstitutional when they clearly violate the Bill of Rights.

Two things should be understood as to the Court:

First: The Court should continue its policy of declaring acts of state legislatures unconstitutional when necessary. Even then it should not set itself up as a High State Legislature, but it would be intolerable to have state acts in defiance of the federal law or the federal Constitution. In addition, the High Court should constantly operate to eliminate conflicting laws.

Second: Congress has the right to make "exceptions" and "regulations" to cases brought up to the Court. Alexander Hamilton emphasized this right, as I have already pointed out; anyhow, the power is vested in Congress by the Constitution.

If Congress were to exercise this power, the people would likely consider it an unwarranted innovation, though the power is in the written Constitution and recognized by the Supreme Court itself. It would produce more or less of a "crisis" in government.

Everyone who knew the attitude of the Court in 1937 thought the majority would declare the Social Security, National Labor Relations and TVA Acts unconstitutional. But

the judges reversed themselves on a dozen points of law and held the acts constitutional. As a result nothing happened.

But suppose the Court had knocked the laws out? Should Congress, in time of economic distress, let the American people wait—for fifteen years, say, as they did in the matter of the income tax, until the judges changed their minds after having held the income tax constitutional for a hundred years? Or for fourteen years, as they did in the minimum wage cases?

That is the question, and it can be answered only by the American people. Do the American people want social progress to be made impossible because a majority of one on the Supreme Bench does not fancy a law?

I do not believe that it could be practical for the American people as a whole to be voting continually on questions. Constant referendums are highly impractical, but occasionally we reach a "crisis"—and I can see no reason why crises involving serious national questions cannot be submitted to the people for popular vote either directly on a referendum or indirectly at a congressional election. Suppose there is a crisis on social security or the size of the Supreme Court—why should it not be promptly submitted to the people? And once submitted, of course, all branches of the government would be required to enforce the decision. Indeed, the President and the Congress take an oath to support the Constitution, and there is no reason to suspect that they would violate this oath any more than an official who has his job by appointment and for life, without responsibility to the people.

And I repeat, all these conflicts can be settled without any amendments. All that is necessary is intelligent vocal public opinion.

Now a few words about the cabinet and governmental efficiency. It would seem to me worthwhile for Congress to require the cabinet members' presence on the floor of the House. The procedure would be entirely constitutional. It has been suggested by several Presidents, Taft and Wilson among them,

and by numerous political scientists and frequently by Congress.

In the British House of Commons, cabinet officers have to face the legislators and answer questions during debates and at other specifically stated times. This practice keeps them alert, and responsible for their acts.

Efficiency in administrative departments would follow as a result of a similar practice in the United States. Members of Congress would know more of the executive departments and of how the government is administered.

Above all, We the People must recognize the importance of service to and in *our* government—service to, by developing intelligent public opinion; service in, by developing a thoroughly efficient civil service.

Devotion to service in the government has been weak largely because of the possibility of high pay or big fortunes in business. That was the frontier psychology and is still the psychology of millions of Americans. But with the continent now very well rounded out, and with the role of government expanding, more and more men and women of high caliber are being attracted to the public service.

Investigation leads me to believe that the British Civil Service is an excellent institution. Whether it is or not, we need trained officials, people who know their jobs *and who have job security.* No man who is doing his duty should be fired because he happens to belong to the wrong political party.

I am convinced, in conversation and correspondence with thousands of Americans, that we all have plenty to learn about government. There are many fields where sincere men and women of all political faiths, whether conservative or liberal, can cooperate. With a will to serve and with more knowledge, we can certainly have a more effective government. In the words of Chief Justice Hughes, spoken on the occasion of the 150th anniversary of the first meeting of Congress under the Constitution, "in the great enterprise of making democracy workable we are all partners."

37

BUSINESS—SEVEN GOOD DOCTORS AND TRUE

Capitalism and the Constitution

I have tried to make it abundantly clear in these pages that the Constitution can be whatever the people say it is—not what the judges say it is, as the present Chief Justice once maintained.* But I hope that I have made it equally clear that the people must be a free people with a stake in the land and the water. Once the people of America allow themselves to become the passive victims of great and cruel floods, dust storms, unemployment, eviction, farm "holidays," bankruptcies, foreclosures, hunger marches—suffering, misery and poverty (and, don't forget, all this and more has happened in America)—once the American people do this, they have lost their constitution.

Even if, either now or in the future, there is some economic "recovery" over past conditions which were worse, *that is no reason for people to be satisfied with what they have* if common endeavor and justice can give them more. Nor is it even for those who now have a good share of the earth's blessings to feel smug about it, for they may be storing up trouble and breakdown for themselves in their complacency.

If one man—either because he is smart or born lucky—piles up all the bear skins in one place, if another gets all the arrow heads, and there is not fair distribution of these things of the earth, trouble is surely ahead. If one or more corporations get various monopolies, there is trouble ahead, too.

Throughout the book, I have treated liberty in terms of land. By *land,* I mean not only the very earth itself, from which

* As we have seen, Mr. Hughes has progressed far since he said this. He has rendered some very liberal opinions, particularly in civil liberties cases.

comes all the wealth, all the groceries, all that we eat and wear; but also the entire economy, all the farming and manufacturing built up on the land and its resources. So, we may say, a society in which the people have no fair share in the land is also a society in which the people have no fair share in the Constitution either.

Now everyone knows that the accepted basis of economic life in this country is "business." The average American has a rather vague notion of what "business" is, but he firmly believes that as "business" goes, so goes the universe.

We still call our economy "capitalism," even though it is far different from what it was a half century ago. We often proudly refer to some huge monopoly as an example of capitalism, even though that very monopoly is helping to destroy capitalism itself.

Capitalism is based on private ownership of most things used to produce goods, and operates through the competitive struggle for profit. The American people, by and large, believe that capitalism can be made to work—that it can provide work for all, security—even plenty, and peace. But if someday they should decide that it won't work, they can establish a socially planned economy—either all planned, or partly so—and under our written Constitution. But that is not the issue today. American psychology is capitalist. There is no sense in talking about abandoning capitalism, because the American people are not even thinking about it.

So the big practical problem before the American people who want to keep their living constitution alive and growing is that of making capitalism serve their needs. The job is to keep capital working. How can we do this? How can we put capital to work? Because there is no other way generally to increase *production, employment* and *consumption.*

The big-money people are not using their surpluses, but are putting them in cold storage—either in vaults or more often in government tax-free bonds. Thus the people do not get the

use of the money, and in effect, must themselves pay the taxes on it. And since the money is locked up, there is less employment. Thus the general run of people are going in the hole deeper and deeper: there is idle money, a heavier burden of taxes, and no work with which to pay the taxes.

Such a situation, obviously, cannot last forever without more serious unemployment, a further lowering of the standard of living, and finally breakdown. Something, obviously, must be done to get capitalism hitting on all cylinders.

By general admission capitalism has been in a bad way since the big burst of the boom in 1929, but the doctors and the people have not given up the case as hopeless. If capitalism is to be saved and made literally to deliver the goods, the best thought in America must get up and get busy, for problems are not solved by labeling critics—or unemployed people—with abusive names. For the conservative and well-fixed to do so is stupidity, a sort of capitalistic hari-kari.

Of course the "haves" have always stuck to their property against the "have-nots" as a matter of personal interest, and human nature. It has not been because the "have-nots" were "reds" or "radicals." It has been because the "haves" naturally wanted to keep on *having*. Throughout history the property interests—whether the great Roman landowner, the Chinese landowner or the French landowner; whether the Southern slaveowner, or the modern factory owner—have always resisted the attempts of the people to improve their condition—to secure a greater interest in the land.

The "have-nots," the people as a whole, have rarely put up an intelligent and well-organized fight. Usually most of them have, with apathy or bitterness, suffered on the side lines. It is my idea that the people must get off the side lines and into the scrimmage for people's rights in land and liberty.

As I am finishing this book, a new book (you can read it in about three hours) has been issued, called *An Economic Program for American Democracy*. It was produced by seven

doctors of political economy in Harvard University and Tufts College, in the good old rock-ribbed state of Massachusetts. Having diagnosed the patient up and down, forward and back, round and round, they prescribed the medicine. They tell us what is troubling capitalism and then give us a prescription.

Capitalism produces two kinds of goods—consumers' goods and producers' goods. The former, the people eat or wear out. The latter are machines and the like to make more goods. When capitalism is well and out of the hospital it is always expanding, that is, making big machines, building railroads, and building big power plants, as well as making shoes and soap.

It has to keep expanding to keep alive.

Now, the reason capitalism fell sick in 1929, the seven good doctors and true tell us, is because it had reached the limits of swelling up and out. The owners of railroads and factories had all the plants which they could use *profitably.* The American continent had been rounded out and exploited up. The age of swelling had come to an end, and there were few places for capitalists profitably to invest the profits they had previously piled up. So something had to be done.

Now comes the doctors' prescription. Since private capital cannot find profitable investments, the government must step in and put that desperately needed capital to work—put it into circulation, into the wages, food, and goods the people must have. Or, if one wishes to use a very hard word brought into our vocabulary by a great conservative hero I shall soon mention, the government should "intervene."

The doctors do not prescribe pump priming. They agree with Al Smith and other leading conservatives that one shot in the arm must be followed by another and that makes trouble.

No, they are against pump priming.

They say that the government must have a long-term policy of intelligent spending and investment, and that the money must be spent for things that *really add to the wealth of the country,* that is: houses, conservation of the soil and natural

resources, highways, city planning, improvement of the people's health, public sanitation, and better education. They are against mere leaf-raking to solve unemployment, and I think we all are, too, including the leaf-rakers themselves.

We might as well realize that there never will be permanent recovery if the government merely abandons the people, or rather if the people are stupid and dumb enough to abandon themselves to a complex economic anarchy, wherein vast economic empires have set up their third forms of government.

We can't refuse the social challenge of monopoly domination —not unless we are ready to surrender the living standard and the liberties we now have. So let's have at the monopolies, and tell them we either take them over, or control them—whichever we, not they, decide is best.

That reminds me—I know a certain gentleman who is considered a great statesman, a mighty constitutional lawyer, a veritable arsenal of knowledge of the wise sayings of the justices of the Supreme Court, and even of the judges who have lain a-moldering in their graves for six or seven centuries past. This statesman thunders against Mo-nop-o-lee year in and year out. Sirs, our forefathers never visioned these Mo-nop-o-lees. Something must be done about them. What, sirs, would Washington, Jefferson, and Lincoln say? The great man is blowing like a whale at sport in the South Seas. The average American listens, and it sounds good. The monopolist listens and knows it is bunk. So the great man keeps on being re-elected, still thundering against Mo-nop-o-lee and "for" the Constitution; the American keeps on being gypped, and the monopolies never worry—perchance they make a campaign contribution to such statesmen because they say they are safe and sound, are for the Constitution, and will leave monopoly alone.

But some other fellow who really opposes monopolies comes out and says that they should be owned or controlled by the people, the government. Such a fellow becomes a demagogue—

for the average American gobbles up the propaganda of the Big Boys—the monopolists put on the screws on election day, and the dirty demagogue, by now a flaming Red, is defeated. At least, that has been what has usually happened so far.

But to get back to the doctors' prescription and to what we're going to do about monopoly. I have a great conservative authority, as I already intimated, who backs up the good doctors on government interference and government spending. This gentleman is accepted as the last word on the Constitution by the Supreme Court, and therefore no one can question either the man or what he says.

The authority is Alexander Hamilton, who was not only the brilliant man I told you about, but the man whom the conservatives say is still the greatest Secretary of the Treasury, not excepting Andrew Mellon, who when he died left an art gallery (which is in everybody's way in the National Capitol) where the worthy poor may culture their crude and unworthy souls in periods of adversity and unemployment.

Nevertheless, in Hamilton's "Report of Manufactures," dealing with the protection of industry, commerce, and business, he says: "To be enabled to contend with success, it is evident that the *interference and aid of their own government are indispensable.*"

But the first and greatest Secretary of the Treasury, who also took over the duties today performed by Secretary of Commerce Harry Hopkins (latest lover of the businessman), had much more to say; and he was a century and a half ahead of Mr. Hopkins—in fact, a century and a half ahead of the Supreme Court, which is just beginning to catch up with him in its decisions. Although he did say that in wealthy nations the rich could make voluntary contributions, he also said that in the United States *"the public purse must supply the deficiency of private resources."* Mr. Hamilton was probably talking about making the rich richer; but he, gentlemen and conservatives, did advocate government *intervention* and public spend-

ing—and "bounties," my good sirs, to "supply the deficiency of private resources."

But we are talking about today. To make a long story short, the seven doctors offer an economic program which includes all the good and wise things the New Deal has done. They say in effect: Let's go ahead doing these things, more and better, to keep the money flowing, the people employed, and capitalism running the only way it can in our times and circumstances. It is a program on which really conservative people can stand together to keep the economy running, to save the land, and the living constitution which everybody loves.

All this may involve more efficiency in government—more effectiveness in government—and new techniques which we do not now understand. Will these Big Boys, the monopolists, have eyes with which to see? Will these Big Boys understand that society can only be preserved by the intelligent and scientific approach?

I am afraid not, but I hope so.

Still, if the people understand, and make the welkin ring about conditions, maybe—maybe—we can work things out. This will take courage in acting and courage in thinking—in fact, an exceptional use of intelligence by the conservatives themselves.

It all gets back to the old proposition that if the Old Guard insists on everything being done as the Old Guard did it 150 years ago, not only the Old Guard, but the nation itself, will have a hard time—much harder than any of us think. In fact, we will get so hard and brittle we will crack and blow up. Personally, I think all of us Americans like the old conservative idea of homes and farms and families and happiness the best. I know I do; but if we are to have this sort of conservatism, the conservatives themselves must see that the big job is for them to save themselves by seeing new light.

Light . . . for as I complete this, way down here in the tail end of Texas, high on the hill I stand this night, and look at

the full moon. All day great clouds of dust have swirled in the Texas sun, eroding lands, testifying to our human follies, choking us, choking my father's and my brother's cattle. Land torn up, and roiling in the sky. . . . In the darkness I stand, and the sky is steel-black blue. The moon is like a deep round hole in the sky, a hole of blurred edges, a weak light far, far away.

Earth in the sky . . . six miles away is the old Spanish city of San Antonio, where I was born. Great Neon lights, airplane beacons, usually stand clear and bright in the sky. But tonight these lights seem to blink on and off, sometimes going out for minutes, for the dust is in great moving masses, covering up the lights like black clouds passing the moon and stars.

People, People, where are you? Down in the depths of the earth in Manhattan, rushing on at Pennsylvania Station and Grand Central, over the prairies of the Dakotas and Nebraska, in the mountains and valleys, up in the sky, slithering through the space a hundred times faster than our fathers; and down on the ground again, in banks, homes, villages, cities, streets.

Bugles cry in this night which is dead and murky. They are at the military school two miles away, down in the valley of San Antonio. War. . . . Do I hear the cadenced march of world death? Of armaments gutting our good earth? Of armies grimly, silently, plodding on to the mass kill, and is civilization using the great engines of science for its death? Well . . . let's get back to the constitution of the earth, for war is the constitution of death, and is not a part of this story.

The Constitution. May God preserve it; that is, may God give us the light to preserve and keep it living. The Law of the Land. Modern science. Knowledge. Humanity struggles on, in the earth. May our souls be free . . . may we live in the earth, and in peace.

Book II

DOCUMENTS TELL THE TALE

INTRODUCTION TO SECOND BOOK

The story has been told in the First Book; in this Second Book are the Constitutional documents so that if one cares to, he may read them. This is extra—and if what it contains bores you, blame your forefathers and not me.

This Second Book might be called a *Constitutional History of the United States in Documents,* for those essential ones not contained in the First Book are all here. But if the study is made from a documentary viewpoint, one should include Chapter 11, The Declaration of American Rights, and Chapter 13, the Declaration of the Causes and Necessity of Taking Up Arms—both in the First Book. Any student should also eventually read *The Federalist,* and Madison's *Debates in the Constitutional Convention of 1787.*

However, these documents ought not to bore anyone. Unnecessary junk and verbiage have been cut, although where necessary an entire document is presented, word for word. I have pored over hundreds of documents in getting the ones presented here. At first I had this book geared up to 100,000 words; now by proper arrangement and by elimination of extraneous matter, I have it down to around 30,000 words.

These are your documents, my good sir or good lady, as well as mine. So take a look, or else liberty may get gone with the wind.

MAURY MAVERICK.

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MAGNA CARTA, 1215

It does not seem necessary to present here the complete Magna Carta. It is around thirty-five hundred words in the original Latin, and over five thousand in the English translation. Though printed as early as 1499 by Richard Pynson, its exact contents were not generally known until 1759, when Blackstone printed it in his book, *The Great Charter and the Charter of the Forest.* However, from 1215, the date of its drafting, the conception of Magna Carta as a "Charter of Liberties" grew in the minds of the people.

Four original sealed copies are in existence—all of them in England. Photographic copies can be obtained from the British Library of Information in New York, but nobody but a Latin scholar of great attainments could even begin to understand the original.

Some excerpts are quoted in order to give an idea of it. As pointed out in the First Book, it was one long-drawn-out instrument, without preamble, "chapters" or sections. Scholars, however, have for convenience divided it into a preamble and sixty-three "chapters." The proper sequence, of course, has been kept.

The quotations given here are from Dr. William Sharp McKechnie's book, *Magna Carta,* the outstanding work on the subject. His translations are regarded as the best.

PREAMBLE OF MAGNA CARTA—ORIGINAL LATIN AND ENGLISH:

Johannes Dei gratia rex Anglie, dominus Hibernie, dux Normannie et Aquitannie, et comes Andegavie, archiepiscopis, episcopis, abbatibus, comitibus, baronibus, justiciariis, forestariis, vicecomitibus, prepositis, ministris et omnibus ballivis et fidelibus suis salutem. Sciatis nos intuitu Dei et pro salute anime nostre et omnium antecessorum et

heredum nostrorum, ad honorem Dei et exaltationem sancte Ecclesie, et emendacionem regni nostri, per consilium venerabilium patrum nostrorum, Stephani Cantuariensis archiepiscopi tocius Anglie primatis et sancte Romane ecclesie cardinalis, Henrici Dublinensis archiepiscopi, Willelmi Londoniensis, Petri Wintoniensis, Joscelini Bathoniensis et Glastoniensis, Hugonis Lincolniensis, Walteri Wygorniensis, Willelmi Coventriensis, et Benedicti Roffensis episcoporum; magistri Pandulfi domini pape subdiaconi et familiaris, fratris Aymerici magistri milicie Templi in Anglia; et nobilium virorum Willelmi Mariscalli comitis Penbrocie, Willelmi comitis Sarresburie, Willelmi comitis Warennie, Willelmi comitis Arundellie, Alani de Galeweya constabularii Scocie, Warini filii Geroldi, Petri filii Hereberti, Huberti de Burgo senescalli Pictavie, Hugonis de Nevilla, Mathei filii Hereberti, Thome Basset, Alani Basset, Philippi de Albiniaco, Roberti de Roppeleia, Johannis Mariscalli, Johannis filii Hugonis et aliorum fidelium nostrorum.

The translation is as follows:

John, by the grace of God, king of England, lord of Ireland, duke of Normandy and Aquitaine, and count of Anjou, to the archbishops, bishops, abbots, earls, barons, justiciars, foresters, sheriffs, stewards, servants, and to all his bailiffs and liege subjects greeting. Know that, having regard to God and for the salvation of our souls, and those of all our ancestors and heirs, and unto the honour of God and the advancement of holy Church, and for the reform of our realm, [we have granted as underwritten] by advice of our venerable fathers, Stephen, archbishop of Canterbury, primate of all England and cardinal of the holy Roman Church, Henry archbishop of Dublin, William of London, Peter of Winchester, Jocelyn of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, Benedict of Rochester, bishops; of master Pandulf, subdeacon and member of the household of our lord the Pope, of brother Aymeric (master of the Knights of the Temple in England), and of the illustrious men William Marshal, earl of Pembroke, William, earl of Salisbury, William, earl of Warenne, William, earl of Arundel, Alan of Galloway (constable of Scotland), Waren Fitz Gerald, Peter Fitz Herbert, Hubert de Burgh (seneschal of Poitou), Hugh de Neville, Matthew Fitz Herbert, Thomas Basset, Alan Basset, Philip d'Aubigny, Robert of Roppesley, John Marshal, John Fitz Hugh, and others, our liegemen.

From this it can be seen that the Magna Carta was a treaty between the King and his nobility and clergy. It was *not in any sense* a constitution of the people. A long, tedious study, not of much value to the present-day student of modern constitutional law, would be necessary to understand the Magna Carta thoroughly.

CHAPTERS 39 AND 40, LAW OF THE LAND, AND JUSTICE

Chapter 39 is generally regarded as the most important section of the Magna Carta, but 40 is also important. So both are presented. Of these, McKechnie says that they had much "read into them that would have astonished their framers: application of modern standards has resulted in complete misapprehension."

Here follows 39, in English:

> No freeman shall be taken or [and] imprisoned or disseised or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or [and] by the law of the land.

And 40:

> To no one will we sell, to no one will we refuse or delay, right or justice.

It is from 39, with its reference to "law of the land" that we are *supposed* to get due process of law, jury trial, equal justice, and so on. At great length McKechnie points out the errors in this supposition.

THEIR LORDSHIPS DIDN'T "LET BUSINESS ALONE"

The regulation of business is nothing new.

Chapter 35 reads:

> Let there be one measure of wine throughout our whole realm; and one measure of ale; and one measure of corn, to wit, "the London quarter"; and one width of cloth (whether dyed, or russet, or "hal-

berget"), to wit, two ells within the selvedges; of weights also let it be as of measures.

As a matter of fact, numerous regulations which concerned business were made. (The actual word *business* [Latin, *negocium*] is used in another part of the instrument.) Provision was made for the practices of buying and selling, and for the travel of merchants, both English and foreign.

NAVIGATION, REFORESTATION—WHAT, A TVA?

Chapter 33 deals with navigation:

All kydells for the future shall be removed altogether from the Thames and the Medway, and throughout all England, except the sea shore.

"Kydells" were fish-weirs that got in the way of river transportation. Their removal was necessary because roads were in a deplorable state. There are other provisions concerning rivers, riverbanks, forests, and waste of soil. Mention is made of "disafforestation." Apparently there had been waste of resources—lands, waters and forests.

Although admittedly not quite a modern TVA, this might be one of the first documents of record which dealt with "conservation of natural resources."

THE JEWS WERE TREATED BETTER THAN BY HITLER

The "Jewish question" was also touched upon in the Magna Carta, although John granted a separate "Charter to the Jews." The Jews had no citizenship, and were generally persecuted. But not so cruelly and systematically as by Mr. Hitler today.

Chapter 10 reads:

If one who has borrowed from the Jews any sum, great or small, die before that loan be repaid, the debt shall not bear interest while the heir is under age, of whomsoever he may hold; and if the debt fall into our hands, we will not take anything except the principal sum contained in the bond.

And 11:

And if anyone die indebted to the Jews, his wife shall have her dower and pay nothing of that debt; and if any children of the deceased are left under age, necessaries shall be provided for them in keeping with the holding of the deceased; and out of the residue the debt shall be paid, reserving, however, service due to feudal lords; in like manner let it be done touching debts due to others than Jews.

SOME GENERAL PROVISIONS

There were general provisions for charter rights of London and other cities, for heirs, inheritances, guardians, rights of widows, war taxes (not levied except by "common counsel," by King with lords), for military service, all kinds of knights' fees, criminal and civil procedure of courts, various writs, rents, dues and foreign affairs.

With these noble pretensions all written down in Latin which few could understand, the King and their lordships repaired to their unsanitary piles of rocks they called castles. As they left, they began to consider all of the ways they could violate the agreement they had made. The King, who had only signed in fear of his life, soon after tried to welch.

But thereafter there were more charters, petitions, and bills of rights. Each time, more and more classes of people were considered.

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CHARTERS, CONSTITUTIONS, AND ORDINANCES

Colonial Period

Royal charters, constitutions, ordinances, and other Colonial documents which appear typical, are here included in substance or in part. Historically, they form a part of American constitutionalism, and mark the growing belief in constitutional government.

Of course, many of the royal charters were arbitrary documents, mere monopolies granted by the King, where liberty was specifically of no consideration. Some of these charters were precisely like the charters which British and later Belgian kings granted to traders in Africa. However, because of the character and race of the Colonists involved, these charters frequently attained the dignity of "Colonial Constitutions."

NEW ENGLAND CONFEDERATION

Common undertakings began from the very moment the Colonists arrived. That was because of the Indians and the hardships of a frontier life. Self-government grew naturally. Soon colonies and communities began to trade with each other.

The idea of "confederation" of these various groups of people seems first to have been suggested by Connecticut, early in the 17th century. Wrangling broke out, and the confederation suggested was never organized. But in May, 1643, the articles of the "United Colonies of New-England" were adopted. The new confederation, or "consociation," actually had meetings for about forty years.

The essential parts of the Articles are as follows:

ARTICLES OF

CONFEDERATION BETWIXT THE PLANTATIONS UNDER THE GOVERNMENT OF THE MASSACHUSETTS, THE PLANTATIONS UNDER THE GOVERNMENT OF PLIMOUTH, THE PLANTATIONS UNDER THE GOVERNMENT OF CONNECTICUT, AND THE GOVERNMENT OF NEW HAVEN, WITH THE PLANTATIONS IN COMBINATION THEREWITH.

Whereas we all came into these parts of *America,* with one and the same end and ayme, namely, to advance the Kingdome of our Lord Jesus Christ, and to enjoy the liberties of the Gospel, in purity with peace; and whereas in our settling (by a wise providence of God) we are further dispersed upon the Sea-Coasts, and Rivers, then was at first intended, so that we cannot (according to our desire) with convenience communicate in one Government, and Jurisdiction; and whereas we live encompassed with people of severall Nations, and strange languages, which hereafter may proved injurious to us, and our posterity: And forasmuch as the Natives have formerly committed sundry insolencies and outrages upon severall Plantations of the English, and have of late combined against us. And seeing by reason of the sad distractions in *England,* which they have heard of, and by which they know we are hindred both from that humble way of seeking advice, and reaping those comfortable fruits of protection which, at other times, we might well expect; we therefore doe conceive it our bounden duty, without delay, to enter into a present Consotiation amongst our selves, for mutuall help and strength in all our future concernments, that, as in Nation, and Religion, so, in other respects, we be, and continue, One, according to the tenour and true meaning of the ensuing Articles.

I. Wherefore it is fully Agreed and Concluded by and between the parties, or Jurisdictions above named, and they doe joyntly and severally by these presents agree and conclude, That they all be, and henceforth be called by the name of, *The United Colonies of New-England.*

II. The said United Colonies for themselves, and their posterities doe joyntly and severally hereby enter into a firm and perpetuall league of friendship and amity, for offence and defence, mutuall

advice and succour, upon all just occasions, both for preserving and propagating the truth, and liberties of the Gospel, . . .

It will be noted that the idea of a federated or *con*federated American government was already developing. The principal reasons were, of course, military necessity, internal order, and trade.

Article II concerned itself with matters of "offence and defence." This included "preserving and propagating the truth, and liberties of the Gospel." "*Liberties* of the Gospel," of course, did not mean religious liberty as we understand it today. Many were the witches and poor peaceful Quakers to be burned.

Because of trade, travel became a necessity. So the Articles provided in another part that citizens of all the colonies had the right of travel "without due certificates"; also, that there should be speedy justice to "all Confederates equally"; that prisoners should be given up on warrant of one colony to another. The idea of perpetual union and friendship is several times expressed. The idea of "union forever" had begun.

First Charter of Virginia
April 10/20, 1606

I. *JAMES*, by the Grace of God, King of *England, Scotland, France*, and *Ireland*, Defender of the Faith, &c. WHEREAS our loving and well-disposed Subjects, Sir *Thomas Gates*, and Sir *George Somers*, Knights, *Richard Hackluit*, Clerk, Prebendary of *Westminster*, and *Edward-Maria Wingfield*, *Thomas Hanham*, and *Ralegh Gilbert*, Esqrs. *William Parker*, and *George Popham*, Gentlemen, and divers others of our loving Subjects, have been humble Suitors unto us, that We would vouchsafe unto them our Licence, to make Habitation, Plantation, and to deduce a Colony of sundry of our People into that Part of *America*, commonly called VIRGINIA, and other Parts and Territories in *America*, either appertaining unto us, or which are not now actually possessed by any *Christian* Prince or People, situate, lying, and being all along the Sea Coasts, between four and thirty

Degrees of *Northerly* Latitude from the Equinoctial Line, and five and forty Degrees of the same Latitude, and in the main Land between the same four and thirty and five and forty Degrees, and the Islands thereunto adjacent, or within one hundred Miles of the Coast thereof;

* * *

III. WE, greatly commending, and graciously accepting of, their Desires for the Furtherance of so noble a Work, which may, by the Providence of Almighty God, hereafter tend to the Glory of his Divine Majesty, in propagating of *Christian* Religion to such People, as yet live in Darkness and miserable Ignorance of the true Knowledge and Worship of God, and may in time bring the Infidels and Savages, living in those Parts, to human Civility, and to a settled and quiet Government; DO, by these our Letters Patents, graciously accept of, and agree to, their humble and well-being. . . .

The making of Colonial coin was authorized. "Money" became a sore subject within a generation, and remained so until the beginning of the Revolution. The Colonists wanted inflation —paper or *tobacco money,* something with which to pay their debts. Here is the original authority:

X. AND that they shall, or lawfully may, establish and cause to be made a Coin, to pass current there between the People of those several Colonies, for the more Ease of Traffick and Bargaining between and amongst them and the Natives there, of such Metal, and in such Manner and Form, as the said several Councils there shall limit and appoint.

Of exceptional importance was the extension to the Colonists and their children of the same rights as Englishmen. The fact that they did *not* enjoy such rights furnished one of the complaints leading to the Revolution.

The provisions (Article XV) are as follows:

XV. ALSO we do, for Us, our Heirs, and SUCCESSORS, DECLARE, by these Presents, that all and every the Persons, being our Subjects, which shall dwell and inhabit within every or any of the said several Colonies and Plantations, and every of their children, which shall happen to be born within any of the Limits and Precincts of the said several Colonies and Plantations, shall HAVE and enjoy

all Liberties, Franchises, and Immunities, within any of our other Dominions, to all Intents and Purposes, as if they had been abiding and born, within this our Realm of *England,* or any other of our said Dominions.

There were numerous reissues of this and other original charters. In the original charters there was no self-government granted. As requirements for increasing self-government developed, more rights were *granted* by the Government of England.

In each colony there developed the idea of rights for that particular colony, and likewise, because of increasing trade relations with one another, the idea of *American* rights began to develop.

Massachusetts Body of Liberties, December, 1641

The documentary history of Massachusetts is voluminous. The Massachusetts Body of Liberties contains what is perhaps the Colonists' earliest concept of basic liberties:

A Coppie of the Liberties of the Massachusets Collonie in New England

The free fruition of such liberties Immunities and priveledges as humanitie, Civilitie, and Christianitie call for as due to every man in his place and proportion; without impeachment and Infringement hath ever bene and ever will be the tranquillitie and Stabilitie of Churches and Commonwealths. And the deniall or deprivall thereof, the disturbance if not the ruine of both.

We hould it therefore our dutie and safetie whilst we are about the further establishing of this Government to collect and expresse all such freedomes as for present we foresee may concerne us, and our posteritie after us, And to ratify them with our sollemne consent.

Wee doe therefore this day religiously and unanimously decree and confirme these following Rites, liberties, and priveledges concerneing our Churches, and Civill State to be respectively impartiallie and inviolably enjoyed and observed throughout our Jurisdiction for ever.

1. No mans life shall be taken away, no mans honour or good name shall be stayned, no mans person shall be arested, restrayned, banished, dismembred, nor any wayes punished, no man shall be deprived of his wife or children, no mans goods or estaite shall be taken away from him, nor any way indammaged under Coulor of law, or Countenance of Authoritie, unlesse it be by vertue or equitie of some expresse law of the Country warranting the same, established by a generall Court and sufficiently published, or in case of the defect of a law in any partecular case by the word of god. And in Capitall cases, or in cases concerning dismembring or banishment, according to that word to be judged by the Generall Court.

Note that this is apparently an amplification of the Magna Carta's Law of the Land (Chapter 39).

There follow many immunities and privileges, as well as exemptions. "Fayling of sences," for example, constituted an exemption from military service or public work. Nor could any man's cattle or goods be taken except upon due order of the General Court, and then only when reasonably compensated.

Their attitude toward monopoly is interesting:

9. No monopolies shall be granted or allowed amongst us, but of such new Inventions that are profitable to the Countrie, and that for a short time.

The Town Meeting is described as follows:

12. Every man whether Inhabitant or fforreiner, free or not free shall have libertie to come to any publique Court, Councell, or Towne meeting, and either by speech or writeing to move any lawfull, seasonable, and materiall question, or to present any necessary motion, complaint, petition, Bill or information, whereof that meeting hath proper cognizance, so it be done in convenient time, due order, and respective manner.

Included in this Body of Liberties are "Rites Rules and Liberties concerning Juditiall proceedings." Citizens were protected in both criminal and civil cases. They were entitled to bail, to the right of challenging jurors, to freedom from arrest

without cause, and so on. Protected also were the estates of the deceased.

Concerning religious liberty:

58. Civill Authoritie hath power and libertie to see the peace, ordinances and Rules of Christ observed in every church according to his word, so it be done in a Civill and not in an Ecclesiastical way.

59. Civill Authoritie hath power and libertie to deale with any Church member in a way of Civill Justice, notwithstanding any Church relation, office, or interest.

This so-called religious liberty was of course the opposite of what religious liberty means today.

Married women found certain protections in the courts.

79. If any man at his death shall not leave his wife a competent portion of his estaite, upon just complaint made to the Generall Court she shall be relieved.

But the women got the real break in the matter of being whipped by the husbands. Their husbands could not beat them, unless, of course, in self-defense. Otherwise, wives had to be taken to the police station to get their beating. Here follows the immortal clause:

80. Everie marryed woeman shall be free from bodilie correction or stripes by her husband, unlesse it be in his owne defence upon her assalt. If there be any just cause of correction complaint shall be made to Authoritie assembled in some Court, from which onely she shall receive it.

There follows a listing of various liberties, some of them of real benefit. But take a look at some of the reasons for which you could be put to death:

94. *Capital Laws*

1.

Dut. 13. 6. 10
Dut. 17. 2. 6
Ex. 22. 20

If any man after legall conviction shall have or worship any other god, but the lord god, he shall be put to death.

2.

Ex. 22. 18.
Lev. 20. 27.
Dut. 18. 10.

If any man or woeman be a witch, (that is hath or consulteth with a familiar spirit,) They shall be put to death.

3.

Lev. 24. 15. 16

If any person shall Blaspheme the name of god, the father, Sonne or Holie ghost, with direct, expresse, presumptuous or high handed blasphemie, or shall curse god in the like manner, he shall be put to death.

Notice that the Bible is given as authority in each case. And those in power were the judges of *who* was a witch, and *who* had worshipped "any other God but the Lord God." We Americans should remember that these laws were actually enforced in this country—that men and women were burned to death because of difference of opinion, or religious belief.

Maryland Toleration Act
April, 1649

In effect, religious tolerance (though it applied only to those "professing Christ") was practiced from the first in Catholic Maryland—as much as a century and a quarter before the American Revolution.

It seems also that people in Maryland were protected from calling each other names. They had no "Reds" or "Communists" in those days, but it was against the law to settle arguments by calling a person

an heretick, Scismatick, Idolator, puritan, Independant, Prespiterian popish priest, Jesuite, Jesuited papist, Lutheran, Calvenist, Anabaptist, Brownist, Antinomian, Barrowist, Roundhead, Separatist, or any other name or terme in a reproachfull manner relating to matter of Religion.

And the Act continued:

And whereas the inforceing of the conscience in matters of Religion hath frequently fallen out to be of dangerous Consequence in those

commonwealthes where it hath been practised, And for the more quiett and peaceable governement of this Province, and the better to preserve mutuall Love and amity amongst the Inhabitants thereof. Be it Therefore . . . enacted (except as in this present Act is before Declared and sett forth) that noe person or persons whatsoever within this Province, or the Islands, Ports, Harbors, Creekes, or havens thereunto belonging professing to beleive in Jesus Christ, shall from henceforth bee any waies troubled, Molested or discountenanced for or in respect of his or her religion nor in the free exercise thereof within this Province or the Islands thereunto belonging nor any way compelled to the beleife or exercise of any other Religion against his or her consent, soe as they be not unfaithfull to the Lord Proprietary, or molest or conspire against the civill Government established or to bee established in this Province under him or his heires.

Prohibitions against molestations are set forth in detail. These are followed by penalities for violation. Damages collected were split between the Lord Proprietor and the one damaged. If they were not paid, the offender was severely punished by "publick whipping" (a legal punishment in Maryland even today) and also imprisonment—bail at the discretion of the Lord Proprietor *only*.

Albany Plan of Union
July 10, 1754

After the beginning of the 18th century, trouble with the Indians led The Privy Lords of Trade and Plantations, by letter dated September, 1753, to authorize a congress to meet at Albany, New York. The commissioners from Massachusetts were instructed to "enter into articles of union and confederation for the general defence of his Majesty's subjects and interests in North America, as well in time of peace as of war."

The commissioners unanimously adopted a resolution that union was absolutely necessary for their security and defense, and Franklin was appointed to draw up a plan.

Franklin's plan was not approved by any of the colonies, nor

by the King, because the Lords of Trade politely double-crossed the Colonists.

Nevertheless the idea of *union* continued stronger than ever in the minds of the people. It should also be noted that the idea of a *constitution* was constantly developing in the minds of the Colonists.

In the last paragraph of the Plan of Union the word *constitution* is used twice. Franklin referred to *"this* general constitution" and also *"this* constitution," which to him meant a particular *frame* or *form* of government. To him, government and constitution were synonymous. Similarly "the" Constitution of 1789 was regarded by its framers as "this" constitution —that is *a* constitution, not the *only* one.

Here follow excerpts from Franklin's, or the Albany, Plan of Union:

PLAN of a proposed UNION of the several Colonies of Massachusetts Bay, New Hampshire, Connecticut, Rhode Island, New York, New Jerseys, Pennsylvania, Maryland, Virginia, North Carolina, and South Carolina, for their mutual defence and security, and for extending the British Settlements in North America.

That humble application be made for an Act of the Parliament of Great Brittain, by virtue of which, one General Government may be formed in America, including all the said Colonies, within, and under which Government each Colony may retain its present constitution, except in the particulars wherein a charge [*change*] may be directed by the said Act, as hereafter follows.

That the said General Government be administered by a president General, to be appointed & supported by the Crown, and a grand Council to be chosen by the representatives of the people of the several Colonies, meet [*met*] in their respective assemblies.

That within Months after the passing of such Act, The house of representatives in the several Assemblies, that Happen to be sitting within that time or that shall be specially for that purpose convened, may and shall chose, Members for the Grand Council . . .

Who shall meet for the present time at the City of Philadelphia in

Pennsylvania, being called by the President General as soon as conveniently may be after his appointment.

That there shall be a New Election of the Members of the Grand Council every three years, and on the death or resignation of any Member, his place should be supplyed by a new choice at the next sitting of the Assembly of the Colony he represented.

That after the first three years, when the proportion of money arising out of each Colony to the General Treasury can be known, the number of Members to be chosen, for each Colony shall from time to time in all ensuing Elections be regulated by that proportion (yet so as that the Number to be chosen by any one province be not more than seven nor less than two).

That the Grand Council have power to chuse their speaker, and shall neither be dissolved prorogued, nor continue sitting longer than six weeks at one time without their own consent, or the special command of the Crown. . . .

That the Assent of the President General be requisite to all Acts of the Grand Council, and that it be his Office and duty to cause them to be carried into execution. . . .

That they raise and pay Soldiers, and build Forts for the defence of any of the Colonies, and equip vessels of Force to guard the Coasts and protect the Trade on the Ocean, Lakes, or great Rivers; but they shall not impress men in any Colonies without the consent of its Legislature. That for these purposes they have power to make Laws and lay and Levy such general duties, imposts or taxes, as to them shall appear most equal and just, considering the ability and other circumstances of the Inhabitants in the several Colonies, and such as may be collected with the least inconvenience to the people, rather discouraging luxury, than loading Industry with unnecessary burthens.— . . .

That the General accounts shall be yearly settled and reported to the several Assemblies.

That a Quorum of the Grand Council impowered to act with the President General, do consist of twenty five Members, among whom there shall be one or more from a majority of the Colonies. That the laws made by them for the purposes aforesaid, shall not be repugnant, but as near as may be agreeable to the Laws of England, and shall be

transmitted to the King in Council for approbation, as soon as may be after their passing, and if not disapproved within three years after presentation to remain in Force.

That in case of the death of the President General, the Speaker of the Grand Council for the time being shall succeed, and be vested with the same powers and authority, to continue until the King's pleasure be known.

That all Military Commission Officers, whether for land or sea service, to act under this General constitution . . . in case of vacancy by death or removal of any Officer Civil or Military under this constitution, The Governor of the Province in which such vacancy happens, may appoint till the pleasure of the President General and Grand Council can be known.—That the particular Military as well as Civil establishments in each Colony remain in their present State this General constitution notwithstanding. . . .

Resolution of the Stamp Act Congress
October 19, 1765

The Stamp Act had outraged the people of the Colonies. Urged on by the Massachusetts House of Representatives, the Stamp Act Congress met in October of 1765, in New York.

The surrounding circumstances, as well as the document itself, are interesting. In the statement we find the British Government accused of acting "unconstitutionally." Mention is made of right of trial by jury, and rights of "natural born subjects."

Article IX complained of the burdensome duties on the grounds that "from the scarcity of specie, the payment of them [was] absolutely impracticable." The hint—or threat—was also dropped that the restrictions would make it very difficult for anybody to purchase the manufactures of Great Britain.

It is particularly interesting that as many as nine colonies were represented at the Congress—South Carolina, Delaware, Pennsylvania, Maryland, Massachusetts, New Jersey, Rhode Island, Connecticut, and New York.

The Resolution of the Stamp Act Congress is as follows:

The members of this Congress, sincerely devoted, with the warmest sentiments of affection and duty to his Majesty's person and government, inviolably attached to the present happy establishment of the Protestant succession, and with minds deeply impressed by a sense of the present and impending misfortunes of the British colonies on this continent; having considered as maturely as time will permit, the circumstances of the said colonies, esteem it our indispensible duty to make the following declarations of our humble opinion, respecting the most essential rights and liberties of the colonists, and of the grievances under which they labour, by reason of several late acts of parliament.

I. That his Majesty's subjects in these colonies, owe the same allegiance to the crown of Great Britain, that is owing from his subjects born within the realm, and all due subordination to that august body the parliament of Great-Britain.

II. That his Majesty's liege subjects in these colonies, are intitled to all the inherent rights and liberties of his natural born subjects, within the kingdom of Great-Britain.

III. That it is inseparably essential to the freedom of a people, and the undoubted right of Englishmen, that no Taxes be imposed on them but with their own consent, given personally, or by their representatives.

IV. That the people of these colonies are not, and, from their local circumstances, cannot be, represented in the House of Commons in Great-Britain.

V. That the only representatives of the people of these colonies are persons chosen therein by themselves, and that no taxes ever have been, or can be constitutionally imposed on them, but by their respective legislatures.

VI. That all supplies to the crown being free gifts of the people, it is unreasonable and inconsistent with the principles and spirit of the British constitution, for the people of Great-Britain to grant to his Majesty the property of the colonists.

VII. That trial by jury, is the inherent and invaluable right of every British subject in these colonies.

VIII. That the late act of parliament, entitled, *An act for granting and applying certain stamp duties, and other duties, in the British colonies and plantations in America,* &c. by imposing taxes on the

inhabitants of these colonies, and the said act, and several other acts, by extending the jurisdiction of the courts of admiralty beyond its ancient limits, have a manifest tendency to subvert the rights and liberties of the colonists.

IX. That the duties imposed by several late acts of parliament, from the peculiar circumstances of these colonies, will be extremely burthensome and grievous; and from the scarcity of specie, the payment of them absolutely impracticable.

X. That as the profits of the trade of these colonies ultimately center in Great-Britain, to pay for the manufactures which they are obliged to take from thence, they eventually contribute very largely to all supplies granted there to the crown.

XI. That the restrictions imposed by several late acts of parliament on the trade of these colonies, will render them unable to purchase the manufactures of Great-Britain.

XII. That the increase, prosperity and happiness of these colonies, depend on the full and free enjoyments of their rights and liberties, and an intercourse with Great-Britain mutually affectionate and advantageous.

XIII. That it is the right of the British subjects in these colonies to petition the king, or either house of parliament.

Lastly, That it is the indispensible duty of these colonies, to the best of sovereigns, to the mother country, and to themselves, to endeavour by a loyal and dutiful address to his Majesty, and humble applications to both houses of parliament, to procure the repeal of the act for granting and applying certain stamp duties, of all clauses of any other acts of parliament, whereby the jurisdiction of the admiralty is extended as aforesaid, and of the other late acts for the restriction of American commerce.

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THE DECLARATION OF INDEPENDENCE, 1776

In CONGRESS, July 4, 1776.

The unanimous Declaration of the thirteen united States of America,

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation. ——— We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. — Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world. ——— He has refused his Assent to Laws, the most wholesome and necessary for the public good. —— He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so

suspended, he has utterly neglected to attend to them. —— He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only. —— He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures. —— He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people. —— He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within. —— He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands. —— He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers. —— He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries. —— He has erected a multitude of New Offices, and sent hither swarms of Officers to harrass our people, and eat out their substance. —— He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures. —— He has affected to render the Military independent of and superior to the Civil power. —— He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation: — For quartering large bodies of armed troops among us: — For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States: — For cutting off our Trade with all parts of the world: — For imposing Taxes on us without our Consent: — For depriving us in many cases, of the benefits of Trial by Jury: — For transporting us beyond Seas to be tried for pretended offences: — For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies: — For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments: — For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever. —— He has abdicated Government here, by declaring us out of his Protection and waging War

against us. —— He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people. —— He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation. —— He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands. —— He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions. In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people. Nor have We been wanting in attentions to our Brittish brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.——

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. —— And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

John Hancock

Button Gwinnett
Lyman Hall
Geo Walton.

Wm Hooper
Joseph Hewes,
John Penn

Edward Rutledge.
Thos Heyward Junr.
Thomas Lynch Junr.
Arthur Middleton

Samuel Chase
Wm. Paca
Thos. Stone
Charles Carroll
of Carrollton

George Wythe
Richard Henry Lee.
Th Jefferson

Benja Harrison
Thos Nelson jr.
Francis Lightfoot Lee
Carter Braxton

Robt Morris
Benjamin Rush
Benja. Franklin
John Morton
Geo Clymer
Jas. Smith.
Geo. Taylor
James Wilson
Geo. Ross

Caesar Rodney
Geo Read
Tho M : Kean

Wm Floyd
Phil. Livingston
Frans. Lewis
Lewis Morris

Richd. Stockton
Jno Witherspoon
Fras. Hopkinson
John Hart
Abra Clark

Josiah Bartlett
Wm. Whipple

Saml Adams
John Adams
Robt Treat Paine
Elbridge Gerry

Step. Hopkins
William Ellery

Roger Sherman
Saml Huntington
Wm. Williams
Oliver Wolcott
Matthew Thornton

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ARTICLES OF CONFEDERATION,* MARCH 1, 1781

To all to whom these Presents shall come, we the under signed Delegates of the States affixed to our Names, send greeting.

Whereas the Delegates of the United States of America, in Congress assembled, did, on the 15th day of November, in the Year of Our Lord One thousand Seven Hundred and Seventy seven, and in the Second Year of the Independence of America, agree to certain articles of Confederation and perpetual Union between the States of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia in the words following, viz. "Articles of Confederation and perpetual Union between the states of Newhampshire, Massachusetts-bay, Rhodeisland and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia.

Article I. The Stile of this confederacy shall be "The United States of America."

Article II. Each state retains its sovereignty, freedom, and independence, and every Power, Jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled.

Article III. The said states hereby severally enter into a firm league

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**Journals of the Continental Congress,* Library of Congress edition, Vol. XIX (1912), p. 214. Also *Formation of the Union of the American States,* Government Printing Office (1927), p. 27.

The Articles of Confederation were agreed to by the Congress, November 15, 1777. They were, as appears from the list of signatures affixed to these Articles, signed at different times by the delegates of the different American States. On March 1, 1781, the delegates from Maryland, the last of the States to take action, "did, in behalf of the said State of Maryland, sign and ratify the said articles, by which act the Confederation of the United States of America was completed, each and every of the Thirteen United States, from New Hampshire to Georgia, both included, having adopted and confirmed, and by their delegates in Congress, ratified the same."

of friendship with each other, for their common defence, the security of their Liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Article IV. The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union, the free inhabitants of each of these states, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several states; and the people of each state shall have free ingress and regress to and from any other state, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively, provided that such restriction shall not extend so far as to prevent the removal of property imported into any state, to any other state, of which the Owner is an inhabitant; provided also that no imposition, duties or restriction shall be laid by any state, on the property of the united states, or either of them.

If any Person guilty of, or charged with treason, felony, or other high misdemeanor in any state, shall flee from Justice, and be found in any of the united states, he shall, upon demand of the Governor or executive power, of the state from which he fled, be delivered up and removed to the state having jurisdiction of his offence.

Full faith and credit shall be given in each of these states to the records, acts and judicial proceedings of the courts and magistrates of every other state.

Article V. For the more convenient management of the general interests of the united states, delegates shall be annually appointed in such manner as the legislature of each state shall direct, to meet in Congress on the first Monday in November, in every year, with a power reserved to each state, to recal its delegates, or any of them, at any time within the year, and to send others in their stead, for the remainder of the Year.

No state shall be represented in Congress by less than two, nor by more than seven Members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office

under the united states, for which he, or another for his benefit receives any salary, fees or emolument of any kind.

Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the states.

In determining questions in the united states in Congress assembled, each state shall have one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any Court, or place out of Congress, and the members of congress shall be protected in their persons from arrests and imprisonments, during the time of their going to and from, and attendance on congress, except for treason, felony, or breach of the peace.

Article VI. No state, without the Consent of the united states in congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any King prince or state; nor shall any person holding any office of profit or trust under the united states, or any of them, accept of any present, emolument, office or title of any kind whatever from any king, prince or foreign state; nor shall the united states in congress assembled, or any of them, grant any title of nobility.

No two or more states shall enter into any treaty, confederation or alliance whatever between them, without the consent of the united states in congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No state shall lay any imposts or duties, which may interfere with any stipulations in treaties, entered into by the united states in congress assembled, with any king, prince or state, in pursuance of any treaties already proposed by congress, to the courts of France and Spain.

No vessels of war shall be kept up in time of peace by any state, except such number only, as shall be deemed necessary by the united states in congress assembled, for the defence of such state, or its trade; nor shall any body of forces be kept up by any state, in time of peace, except such number only, as in the judgment of the united states, in congress assembled, shall be deemed requisite to garrison the forts necessary for the defence of such state; but every state shall always keep up a well regulated and disciplined militia, sufficiently armed and accoutred, and shall provide and constantly have ready for use, in

public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition and camp equipage.

No state shall engage in any war without the consent of the united states in congress assembled, unless such state be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such state, and the danger is so imminent as not to admit of a delay till the united states in congress assembled can be consulted: nor shall any state grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the united states in congress assembled, and then only against the kingdom or state and the subjects thereof, against which war has been so declared, and under such regulations as shall be established by the united states in congress assembled, unless such state be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the united states in congress assembled, shall determine otherwise.

Article VII. When land-forces are raised by any state for the common defence, all officers of or under the rank of colonel, shall be appointed by the legislature of each state respectively, by whom such forces shall be raised, or in such manner as such state shall direct, and all vacancies shall be filled up by the State which first made the appointment.

Article VIII. All charges of war, and all other expences that shall be incurred for the common defence or general welfare, and allowed by the united states in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states in proportion to the value of all land within each state, granted to or surveyed for any Person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the united states in congress assembled, shall from time to time direct and appoint.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several states within the time agreed upon by the united states in congress assembled.

Article IX. The united states in congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article—of sending and

receiving ambassadors—entering into treaties and alliances, provided that no treaty of commerce shall be made whereby the legislative power of the respective states shall be restrained from imposing such imposts and duties on foreigners as their own people are subjected to, or from prohibiting the exportation or importation of any species of goods or commodities, whatsoever—of establishing rules for deciding in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the united states shall be divided or appropriated—of granting letters of marque and reprisal in times of peace—appointing courts for the trial of piracies and felonies committed on the high seas and establishing courts for receiving and determining finally appeals in all cases of captures, provided that no member of congress shall be appointed a judge of any of the said courts.

The united states in congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more states concerning boundary, jurisdiction or any other cause whatever; which authority shall always be exercised in the manner following. Whenever the legislative or executive authority or lawful agent of any state in controversy with another shall present a petition to congress stating the matter in question and praying for a hearing, notice thereof shall be given by order of congress to the legislative or executive authority of the other state in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question: but if they cannot agree, congress shall name three persons out of each of the united states, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names as congress shall direct, shall in the presence of congress be drawn out by lot, and the persons whose names shall be so drawn or any five of them, shall be commissioners or judges, to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination: and if either party shall neglect to attend at the day appointed, without showing reasons, which congress shall judge sufficient, or

being present shall refuse to strike, the congress shall proceed to nominate three persons out of each state, and the secretary of congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall nevertheless proceed to pronounce sentence, or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to congress, and lodged among the acts of congress for the security of the parties concerned: provided that every commissioner, before he sits in judgment, shall take an oath to be administered by one of the judges of the supreme or superior court of the state, where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favour, affection or hope of reward:" provided also, that no state shall be deprived of territory for the benefit of the united states.

All controversies concerning the private right of soil claimed under different grants of two or more states, whose jurisdictions as they may respect such lands, and the states which passed such grants are adjusted, the said grants or either of them being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall on the petition of either party to the congress of the united states, be finally determined as near as may be in the same manner as is before prescribed for deciding disputes respecting territorial jurisdiction between different states.

The united states in congress assembled shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective states—fixing the standard of weights and measures throughout the united states—regulating the trade and managing all affairs with the Indians, not members of any of the states, provided that the legislative right of any state within its own limits be not infringed or violated—establishing or regulating post-offices from one state to another, throughout all the united states, and exacting such postage on the papers passing thro' the same as may be requisite to defray the expences of the said office—appointing all officers of the land forces, in

the service of the united states, excepting regimental officers—appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the united states—making rules for the government and regulation of the said land and naval forces, and directing their operations.

The united states in congress assembled shall have authority to appoint a committee, to sit in the recess of congress, to be denominated "A Committee of the States," and to consist of one delegate from each state; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the united states under their direction—to appoint one of their number to preside, provided that no person be allowed to serve in the office of president more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the united states, and to appropriate and apply the same for defraying the public expences—to borrow money, or emit bills on the credit of the united states, transmitting every half year to the respective states an account of the sums of money so borrowed or emitted,—to build and equip a navy—to agree upon the number of land forces, and to make requisitions from each state for its quota, in proportion to the number of white inhabitants in such state; which requisition shall be binding, and thereupon the legislature of each state shall appoint the regimental officers, raise the men and cloath, arm and equip them in a soldier like manner, at the expence of the united states; and the officers and men so cloathed, armed and equipped shall march to the place appointed, and within the time agreed on by the united states in congress assembled: But if the united states in congress assembled shall, on consideration of circumstances judge proper that any state should not raise men, or should raise a smaller number than its quota, and that any other state should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, cloathed, armed and equipped in the same manner as the quota of such state, unless the legislature of such state shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, cloath, arm and equip as many of such extra number as they judge can be safely spared. And the officers and men so cloathed, armed and equipped, shall march to the place appointed, and within the time agreed on by the united states in congress assembled.

The united states in congress assembled shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expences necessary for the defence and welfare of the united states, or any of them, nor emit bills, nor borrow money on the credit of the united states, nor appropriate money, nor agree upon the number of vessels of war, to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine states assent to the same: nor shall a question on any other point, except for adjourning from day to day be determined, unless by the votes of a majority of the united states in congress assembled.

The congress of the united states shall have power to adjourn to any time within the year, and to any place within the united states, so that no period of adjournment be for a longer duration than the space of six Months, and shall publish the Journal of their proceedings monthly, except such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each state on any question shall be entered on the Journal, when it is desired by any delegate; and the delegates of a state, or any of them, at his or their request shall be furnished with a transcript of the said Journal, except such parts as are above excepted, to lay before the legislatures of the several states.

Article X. The committee of the states, or any nine of them, shall be authorized to execute, in the recess of congress, such of the powers of congress as the united states in congress assembled, by the consent of nine states, shall from time to time think expedient to vest them with; provided that no power be delegated to the said committee, for the exercise of which, by the articles of confederation, the voice of nine states in the congress of the united states assembled is requisite.

Article XI. Canada acceding to this confederation, and joining in the measures of the united states, shall be admitted into, and entitled to all the advantages of this union: but no other colony shall be admitted into the same, unless such admission be agreed to by nine states.

Article XII. All bills of credit emitted, monies borrowed and debts contracted by, or under the authority of congress, before the assembling of the united states, in pursuance of the present confederation,

shall be deemed and considered as a charge against the united states, for payment and satisfaction whereof the said united states, and the public faith are hereby solemnly pledged.

Article XIII. Every state shall abide by the determinations of the united states in congress assembled, on all questions which by this confederation are submitted to them. And the Articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a congress of the united states, and be afterwards confirmed by the legislatures of every state.

And Whereas it hath pleased the Great Governor of the World to incline the hearts of the legislatures we respectively represent in congress, to approve of, and to authorize us to ratify the said articles of confederation and perpetual union. Know Ye that we the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said articles of confederation and perpetual union, and all and singular the matters and things therein contained: And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the united states in congress assembled, on all questions, which by the said confederation are submitted to them. And that the articles thereof shall be inviolably observed by the states we respectively represent, and that the union shall be perpetual. In Witness whereof we have hereunto set our hands in Congress. Done at Philadelphia in the state of Pennsylvania the ninth day of July, in the Year of our Lord one Thousand seven Hundred and Seventy-eight, and in the third year of the independence of America.

Josiah Bartlett,
John Wentworth, junr
August 8th, 1778,
} On the part & behalf of the State of New Hampshire.

John Hancock,
Samuel Adams,
Elbridge Gerry,
Francis Dana,
James Lovell,
Samuel Holten,
} On the part and behalf of the State of Massachusetts Bay.

William Ellery,
Henry Marchant,
John Collins,
} On the part and behalf of the State of Rhode-Island and Providence Plantations.

Roger Sherman,
Samuel Huntington,
Oliver Wolcott,
Titus Hosmer,
Andrew Adams,
} On the part and behalf of the State of Connecticut.

Jas Duane,
Fra: Lewis,
Wm Duer,
Gouvr Morris,
} On the part and behalf of the State of New York.

Jno Witherspoon,
Nathl Scudder,
} On the Part and in Behalf of the State of New Jersey, November 26th, 1778.

Robert Morris,
Daniel Roberdeau,
Jon. Bayard Smith,
William Clingar,
Joseph Reed,
22d July, 1778,
} On the part and behalf of the State of Pennsylvania.

Thos McKean,
Febv 22d, 1779,
John Dickinson,
May 5th, 1779,
Nicholas Van Dyke,
} On the part & behalf of the State of Delaware.

John Hanson,
March 1, 1781,
Daniel Carroll, do
} On the part and behalf of the State of Maryland.

Richard Henry Lee,
John Banister,
Thomas Adams,
Jno. Harvie,
Francis Lightfoot Lee,
} On the Part and Behalf of the State of Virginia.

John Penn,
July 21st, 1778,
Corns Harnett,
Jno. Williams,
} On the part and behalf of the State of North Carolina.

Henry Laurens, William Henry Drayton, Jn° Mathews, Rich^d Hutson, Tho^s Heyward, jun^r.	On the part and on behalf of the State of South Carolina.
Jn°. Walton, 24th July, 1778, Edw^d Telfair, Edw^d Langworthy,	On the part and behalf of the State of Georgia.*

*The proceedings of this day with respect to the signing of the Articles of Confederation, the Articles themselves and the signers are entered in the *Papers of the Continental Congress,* No. 9 (History of the Confederation), but not in the *Journal* itself. The Articles are printed here from the original roll in the Bureau of Rolls and Library, Department of State.

42

NORTHWEST ORDINANCE, 1787

Adopted Under the First Constitution, the Articles of Confederation

The Constitutional provisions of the Northwest Ordinance, adopted July 13, 1787, under the first written Constitution, are of outstanding importance. They are well written and constitute a Bill of Rights for the Northwest Territory, although speech and press are not specifically enumerated. Most important is the specific prohibition of human slavery in the territory northwest of the Ohio River.

This Ordinance figured in national politics and was always recognized by the Supreme Court as valid under the next, or new, Constitution. In fact, in the Dred Scott Case the provision against slavery was recognized, but the power of Congress to legislate over the territory included in the Louisiana Purchase was not (although the Constitution always gave Congress the specific power to govern territorial lands).

Selections from the Ordinance follow:

ORDINANCE OF 1787, JULY 13, 1787

An Ordinance for the Government of the Territory of the United States Northwest of the River Ohio

Section 1. *Be it ordained by the United States in Congress assembled,* That the said Territory, for the purpose of temporary government, be one district, subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

Sections 2 to 12, inclusive, cover the detail of governmental

set-up. This part was competently done, excellent in both draftsmanship and statesmanship.

Section 13. And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions, are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory; to provide, also, for the establishment of States, and permanent government therein, and for their admission to a share in the Federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest:

Section 14. It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact, between the original States and the people and States in the said territory, and forever remain unalterable, unless by common consent, to wit:

ARTICLE I

No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship, or religious sentiments, in the said territory.

ARTICLE II

The inhabitants of the said territory shall always be entitled to the benefits of the writs of *habeas corpus,* and of the trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great. All fines shall be moderate; and no cruel or unusual punishment shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the land, and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made or have force in the said territory, that shall, in any manner

whatever, interfere with or affect private contracts, or engagements, *bona fide,* and without fraud previously formed.

ARTICLE III

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. . . .

That Congress then recognized the necessity of federal control of waterways is shown in Article IV. Particular reference is made to the Mississippi and its tributaries.

When one remembers that in the Europe of that day rivers were still parceled out among owners of private property for toll-collection purposes, the long-range and progressive aspects of this act become clear. In fact, recognition of the need for federal control of waterways for commercial purposes is but one step removed from the recognition of a similar need with respect to all natural resources to ensure their proper conservation and utilization for the general welfare of the people.

ARTICLE IV

. . . The legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona-fide* purchasers. . . . The navigable waters leading into the Mississippi and Saint Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor.

ARTICLE V

(Creation of States)

ARTICLE VI

There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes, whereof, the

party shall have been duly convicted: *Provided always,* That any persons escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.

Be it ordained by the authority aforesaid, That the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby, repealed, and declared null and void.

Done by the United States, in Congress assembled, the 13th day of July, in the year of our Lord 1787, and of their sovereignty and independence the twelfth.*

This last prohibition of slavery is an important indication of the times. The Article was unanimously carried by the state delegations. Only one delegate (from New York) voted against it. Thus it will be noted that every individual Southern delegate voted for the exclusion of slavery from these territories forever.

Slavery was almost universally condemned, primarily because it had begun to become unprofitable. But in 1796 Eli Whitney invented the cotton gin. Slavery became highly profitable. Enormous fortunes were built up.

Then did the ruling class of the South find that God had ordained slavery.

**Journals of Congress* (ed. 1823), IV., pp. 752-54.

43

CONFEDERATE CONSTITUTION

This chapter deals with those portions of the Confederate Constitution which depart from the United States Constitution. As pointed out in Chapter 23, the articles and sections of the two constitutions correspond in numbering, and thus can be conveniently compared by printing them side by side. This method has been adopted, with brief comments where necessary.

Omitted sections of the Confederate Constitution have the exact wording of the corresponding sections of the Constitution of the United States. But where a Confederate section differs in part from the correspondingly numbered section of the United States Constitution, both are shown, with the differences denoted by italics.

UNITED STATES	CONFEDERATE
PREAMBLE	PREAMBLE
We the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.	We, the People of the *Confederate States, each State acting in its sovereign and independent character, in order to form a permanent Federal Government,* establish justice, insure domestic tranquillity, and secure the blessings of liberty to ourselves and our posterity—*invoking the favor and guidance of Almighty God*—do ordain and establish this Constitution for the *Confederate States of America.*

The extended comment already presented in Chapter 23 need not be repeated here. However, the principal point is that the Confederate Constitution had no provision for the general welfare, either in the preamble or in the body of the Constitution. Each state was sovereign, the general government was a mere *agent.*

ARTICLE I	ARTICLE I
SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.	SECTION 1. All legislative powers herein *delegated* shall be vested in a Congress of the *Confederate States*, which shall consist of a Senate and House of Representatives.

Note the Confederate substitution of *delegated* for *granted* —a revision reflecting John C. Calhoun's theory that all sovereignty was vested in the individual state separately, and none in the federal government. The concept of a nation was repudiated.

SECTION 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.	SECTION 2. The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall *be citizens of the Confederate States, and* have the qualifications requisite for electors of the most numerous branch of the State Legislature; *but no person of foreign birth, not a citizen of the Confederate States, shall be allowed to vote for any officer, civil or political, State or Federal.*

From here on the two sections are identical up to the last paragraphs. They read:

The House of Representatives shall chuse their Speaker and other officers; and shall have the sole Power of Impeachment.	The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment, *except that any judicial or other Federal officer, resident and acting solely within the limits of any State, may be impeached by a vote of two thirds of both branches of the Legislature thereof.*

The Confederate Constitutional provision for impeachment by the individual state was to make the Federal judiciary completely subservient to the several states. No general law would then have been enforceable, and the Federal government would have been not only weak, but impotent.

Several following identical sections are here omitted. Enough

of Section 6, Article I, is presented to show an interesting addition to the Confederate Constitution:

SECTION 6. * * * No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States shall be a Member of either House during his Continuance in Office.

SECTION 6. * * * No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the *Confederate States*, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the *Confederate States* shall be a member of either House during his continuance in office. *But Congress may, by law, grant to the principal officer in each of the Executive Departments a seat upon the floor of either House, with the privilege of discussing any measures appertaining to his department.*

For a long time there had been discussion in the country about permitting members of the Cabinet to have a seat in Congress. The Confederates believed this a good idea; many today believe it would be a proper thing for the United States Government. And, as a matter of fact, it can be done by mere resolution of either house of Congress, and without amending the Constitution.

Since the Confederate Government was to be a mere agent, and was to do little or nothing for the people of the several states, its power to make appropriations was restricted by Section 7 of Article I. This gave the President the power of item-veto, that is, the power of approving part of an appropriation and disapproving other parts:

SECTION 7. * * * *The President may approve any appropriation and disapprove any other appropriation in the same bill. In such case he shall, in signing the bill, designate the appropriations disapproved; and shall return a copy of such appropriations, with his objections, to the House in which the bill shall have originated; and the same proceedings shall then be had as in case of other bills disapproved by the President.*

THE GENERAL WELFARE CLAUSE CUT OUT OF THE CONFEDERATE CONSTITUTION

Now we reach the General Welfare Clause, containing a most important power of the United States Congress. Here is what happened to that section in the Confederate Constitution:

SECTION 8. The Congress shall have Power—

To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

SECTION 8. The Congress shall have power—

To lay and collect taxes, duties, imposts, and excises, *for revenue necessary* to pay the debts, provide for the common defense, *and carry on the Government of the Confederate* States; *but no bounties shall be granted from the Treasury; nor shall any duties or taxes on importations from foreign nations be laid to promote or foster any branch of industry; and all duties, imposts, and excises shall be uniform throughout the Confederate States:*

This is one of the clauses which received full comment in Chapter 23. However, I hope that historians will do more research here. This would not be of mere historical interest, but might throw light on some of our present-day economic viewpoints, as well as on some of the theories of our lawyers and courts.

INTERNAL IMPROVEMENTS FORBIDDEN BY CONFEDERATES

Another difference of great importance is the prohibition of internal improvements:

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes; but neither this, nor any other clause contained in the Constitution, shall ever be construed to delegate the power to Congress to appropriate money for any internal improvement intended to facilitate commerce; except for the purpose of furnishing lights, beacons, and buoys, and other aid to navigation upon the coasts, and the improvement of harbors and the removing of obstructions in river navigation, in

all which cases, such duties shall be laid on the navigation facilitated thereby, as may be necessary to pay the costs and expenses thereof.

This prohibition was of course to prevent industrial development, thereby serving to keep the country agricultural and to maintain King Cotton on his throne forever. It was to be followed to the limit. It was understood that the government should not even build a post road. Only "post-*routes*" were to be established or designated, and the Post Office was to be self-supporting:

To establish Post-Offices and Post Roads.

To establish post-offices and *post routes; but the expenses of the Post Office Department, after the first day of March in the year of our Lord eighteen hundred and sixty-three, shall be paid out of its own revenue.*

The revision of the first paragraph of Section 9, Article I, is of great importance.

SECTION 9. The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or Duty may be imposed on such Importation, not exceeding ten dollars for each Person.

SECTION 9. The importation of *negroes of the African race, from any foreign country other than the slave-holding States or Territories of the United States of America, is hereby forbidden; and Congress is required to pass such laws as shall effectively prevent the same.*

Congress shall also have power to prohibit the introduction of slaves from any State not a member of, or Territory not belonging to, this Confederacy.

Concerning slavery, Alexander H. Stephens of Georgia said:

The new constitution has put at rest *forever* all the agitating questions relating to our peculiar institution—African slavery as it exists amongst us—the proper *status* in our form of civilization.

To which he added that slavery and the new Constitution were in strict conformity with "the ordination of Providence." There had existed in the South for nearly fifty years a large body of literature showing that God had ordained slavery.

More of differing portions of Section 9:

No Bill of Attainder or ex post facto Law shall be passed.

No bill of attainder, *ex post facto* law, *or law denying or impairing the right of property in negro slaves shall be passed.*

No Tax or Duty shall be laid on Articles exported from any State.

No tax or duty shall be laid on articles exported from any State *except by a vote of two thirds of both Houses.*

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another.

The provision in the United States Constitution prohibiting one state from laying any duty on another is omitted from the Confederate. Thus one can foresee a repetition of all the evils of government under the Articles of Confederation. Attention is also directed to Section 10, paragraph 3, under which states could lay duties for improving rivers. This, of course, could have been used to prevent merchants of one state from entering another. There could have been no redress. Also in Section 10, state compacts are provided for. This had been found to be impracticable even under the Articles of Confederation. With the Confederate Constitution setting up a government of mere agency, and no sovereignty, this provision would have broken the South into various states, regions, and localities, and further weakened the federal government.

DIFFERENCES IN MAKING APPROPRIATIONS

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Congress shall appropriate no money from the Treasury, except by a vote of two thirds of both Houses, taken by yeas and nays, unless it be asked and estimated for by some one

of the heads of departments, and submitted to Congress by the President; or for the purpose of paying its own expenses and contingencies; or for the payment of claims against the Confederate States, the justice of which shall have been judicially declared by a tribunal for the investigation of claims against the Government, which it is hereby made the duty of Congress to establish.

All bills appropriating money shall specify, in Federal currency, the exact amount of each appropriation, and the purposes for which it is made; and Congress shall grant no extra compensation to any public contractor, officer, agent, or servant, after such contract shall have been made or such service rendered.

There is also in Section 9 a Bill of Rights, which duplicates the first eight amendments to the United States Constitution. In the Confederate Constitution these rights apply, of course, only to white people. There is one further paragraph, as follows:

Every law, or resolution having the force of law, shall relate to but one subject, and that shall be expressed in the title.

This provision was intended to prohibit "riders" on general legislative bills, just as the provision for item-veto was to curb obnoxious items in appropriation bills.

Here is part of Section 10, which was commented upon above, under Section 9:

SECTION 10. No State shall, without the Consent of Congress, lay any duty on Tonnage, keep Troops or Ships-of-War in time of Peace, enter into any agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

SECTION 10. No State shall, without the consent of Congress, lay any duty on tonnage, *except on sea-going vessels for the improvement of its rivers and harbors navigated by the said vessels; but such duties shall not conflict with any treaties of the Confederate States with foreign nations. And any surplus revenue, thus derived, shall, after making such improvement, be paid into the common treasury; nor shall any State* keep troops or ships-of-war in time of

peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay. *But when any river divides or flows through two or more States, they may enter into compacts with each other to improve the navigation thereof.*

THE EXECUTIVE POWER—ARTICLE II

The presidential, or executive, power is in Article II of both Constitutions. Here is the beginning of both, which is self-explanatory:

ARTICLE II

SECTION 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:

ARTICLE II

SECTION 1. The Executive power shall be vested in a President of the *Confederate States of America. He and the Vice-President shall hold their offices for* the term of *six* years; *but the President shall not be reëligible. The President and the Vice-President shall* be elected as follows:

Many persons still advocate that the Confederate idea should be applied to the United States through an amendment adopted for that purpose.

MORE OF ARTICLE II

SECTION 2. The President shall have power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION 2. *The principal officer in each of the executive departments, and all persons connected with the diplomatic service, may be removed from office at the pleasure of the President. All other civil officers of the executive departments may be removed at any time by the President, or other appointing power, when their services are unnecessary, or for dishonesty, incapacity, inefficiency, misconduct, or neglect of duty; and when so removed, the removal shall be reported to the Senate, together with the reasons therefor.*

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall ex-

pire at the end of their next session. *But no person rejected by the Senate shall be re-appointed to the same office during their ensuing recess.*

ARTICLE III, JUDICIARY, THE SAME

It is not necessary to include Article III, concerning the Judiciary. The only differences are jurisdictional and of slight importance.

There is a prevalent misconception that the Constitution of the Confederacy provided for no Supreme Court. Actually it contained exactly the same provisions as those in the United States Constitution. But the Southern States were suspicious of the Supreme Court, notwithstanding that the Court had usually followed their wishes—particularly in the Dred Scott Case, which blessed slavery forever, and even extended it. Therefore, with the formation of the Confederacy, although the constitutional power was granted, no court was ever appointed, and some authorities say that there was never any intention to appoint one.

Here are some comparisons from Articles IV and V. Note the open reference to slavery, which appears in several other places:

ARTICLE IV	ARTICLE IV
SECTION 2. The citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.	SECTION 2. The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States, *and shall have the right of transit and sojourn in any State of this Confederacy, with their slaves and other property; and the right of property in said slaves shall not be thereby impaired.*

Note that the right of travel "with slaves and other property" might have later been construed as a condition of travel. Such a construction might have left the overwhelming majority of the white population without the protection of the government in their right of travel, because they had no slaves or "other property." The Articles of Confederation (1781) guaranteed

the right of "ingress and egress" for all Americans, but it is not mentioned in the United States Constitution. The right of travel in the United States is still questionable, in that the Supreme Court has not (to date) protected citizens from being intimidated into leaving a state, from being deported, or from being "escorted across the state line." However, the Federal Circuit Court of Appeals has rendered a decision in the Hague case (see chapters on Bill of Rights and Civil Liberties) protecting all these rights, and I predict it will be affirmed by the Supreme Court.

Article IV, Section 2:

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be done.

No slave or other person held to service or labor *in any State or Territory of the Confederate States,* under the laws thereof, escaping *or lawfully carried* into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party *to whom such slave belongs, or* to whom such service or labor may be *due.*

The United States Constitution did not expressly provide for slavery. But the institution was implicitly accepted in the prohibition of slave trade after 1808 (Art. I, Sec. 9). The Confederate provision in Art. IV, Sec. 2, above quoted, did in fact apply to both black slave *and white servant.* By the time of the Civil War, the practice of capturing and returning white servants had stopped—had become in effect "Unconstitutional," although it is even now possible under the Constitution.

However, the Confederates put it in with a bang, applying it not only to slaves but to "other persons." History shows that free people have frequently been pushed down into serfdom, and "other person" of the Confederate provision eventually may have been applied to large groups of white persons—to workers, small farmers, landless share-croppers and tenants. White persons not owners of slaves already had a low social

and economic status, and were treated with contempt not only by the white slave-owning class, but by the Negro slaves as well.

STATES AND TERRITORIES: SLAVERY GOES WITH THE FLAG

Continuing out of Article IV:

SECTION 3. New states may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.	SECTION 3. *Other States may be admitted into this Confederacy by a vote of two thirds of the whole House of Representatives and two thirds of the Senate, the Senate voting by States;* but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress.
The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.	The Congress shall have power to dispose of and make all needful rules and regulations *concerning* the *property of the Confederate* States, *including the lands thereof.* *The Confederate States may acquire new territory; and Congress shall have power to legislate and provide governments for the inhabitants of all territory belonging to the Confederate States, lying without the limits of the several States; and may permit them, at such times and in such manner as it may by law provide, to form States to be admitted into the Confederacy. In all such territory, the institution of negro slavery, as it now exists in the Confederate States, shall be recognized and protected by Congress and by the territorial government; and the inhabitants of the several Confederate States and Territories shall have the right to take to such Territory any slaves lawfully held by them in any of the States or Territories of the Confederate States.*

The United States Constitution (as we saw when discussing the Louisiana Purchase) does not provide specifically for the

acquisition of new territory; the Confederate said "the Confederate States may acquire New territory." Moreover, by the last section of this Article, there was incorporated a provision protecting the institution of Negro slavery wherever the Confederate flag should fly.

ARTICLE V

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress: Provided that no Amendment which may be made prior to the Year one thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE V

SECTION 1. *Upon the demand of any three States, legally assembled in their several conventions, the Congress shall summon a Convention of all the States, to take into consideration such amendments to the Constitution as the said States shall concur in suggesting at the time when the said demand is made; and should any of the proposed amendments to the Constitution be agreed on by the said Convention—voting by States—and the same be ratified by the Legislatures of two-thirds of the several States, or by conventions in two-thirds thereof*—as the one or the other mode of ratification may be proposed by the *general Convention —they shall thenceforward form a part of this Constitution. But* no State shall, without its consent, be deprived of its equal *representation* in the Senate.

Articles VI and VII are formal, establishing the status of the Confederate Government. Article VI includes, also, Articles 9 and 10 of the "Bill of Rights" of the Federal Constitution of the United States.

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THE CONSTITUTION * OF THE UNITED STATES OF AMERICA

SIGNED AT PHILADELPHIA, 1787; ADOPTED, 1789

Also the

BILL OF RIGHTS

Being Amendments I to X, Adopted, 1791, and All Amendments to Date

Preamble: Perfect Union of the People, Common Defence, General Welfare, and Liberty

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I

LEGISLATIVE DEPARTMENT †

Section 1. **Legislative Powers Vested in Congress.** All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. **Method of Choosing, and Qualifications of Representatives.** The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of

* The Constitution as originally written and printed, has no heading as above, it is entirely in blank above the line starting with "We the People . . ." Nowhere in the document is it called "*The* Constitution."

† The descriptive titles are printed to indicate clearly that they did not appear in the original. The device is used to make the document easier to read.

the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Apportionment of Representatives and Taxes. Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.* The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When Vacancies Happen, Governors Call Congressional Elections to Fill Vacancies. When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

House Chooses Speaker. Sole Power of Impeachment.† The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3. **Senators, Two per State; Six-year Term.** The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof,‡ for six Years; and each Senator shall have one Vote.

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* "All other Persons" of course means slaves. Historically interesting, because the Constitution did not openly acknowledge slavery. Recognition of slavery was left-handed, and by implication. See Sec. 9 of this Article; mention is made of "such Persons."

† "Impeachment" frequently misunderstood. It does not mean *removal,* but charges filed. Trial is by the Senate.

‡ Repealed by Amendment XVII (1913) which provided for popular election.

Third of Senate Newly Elected Each Two Years. Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

Qualifications of Senators. No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

Vice-President President of the Senate. The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

Other Officers of the Senate. The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

Senate Sole Power Try Impeachments; on Oath as Court. The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4. **State Legislatures Prescribe Congressional Elections; Can Be Changed by Congress.** The Times, Places and Manner of holding Elections for Senators and Representatives, shall be pre-

scribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

Sessions of Congress.* The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section 5. **Each House Judge of Membership; Rules; Journal; Adjournment.** Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6. **Privileges Senators and Representatives.** The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

Appointments; Not to Hold Two Offices. No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof

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* Changed by "Lame Duck" Amendment (XX).

shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7. **All Revenue Bills to Originate in Lower House.** All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Approval or Veto of Bills by President. Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Veto of President; Two-thirds Vote to Repass. Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8. **General Welfare Clause and Other Powers of Congress.** The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties,

Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of

Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

Blanket Power of Congress to Carry Out Duties. To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9. **Slave Trade (words not used) not to Be Prohibited Prior to 1808.** The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

Habeas Corpus. The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Attainder, Ex post Facto. No Bill of Attainder or ex post facto Law shall be passed.

Taxes, Proportion. No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Export Duties. No Tax or Duty shall be laid on Articles exported from any State.

No State Duties; Equal Trade Rights. No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

Appropriations; Public Accounting to Be Made. No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility by United States; Consent of Congress on Foreign. No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10. **Various Powers Denied States.*** No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of ^the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of ^the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article II

EXECUTIVE DEPARTMENT

Section 1. **Executive Power in President; Term, Four Years.** The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Method of Election, Electors.† Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under

* These were some of the rights denied states in order to guarantee economic and political unity of the country.

† This electoral stuff is tiresome. Skip it. Some day the President ought to be elected by majority vote. Why not?

the United States, shall be appointed an Elector. The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

Qualifications of President. No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

Removal or Death of President, Vice-President Assumes; Congress May Provide. In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the

Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

Compensation of President Set by Congress. The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

President's Oath of Office. Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section 2. **President Commander-in-Chief, and Various Civil Powers.** The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may

happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3. **Shall Inform Congress; May Convene Both Houses.** He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4. **Impeachment and Removal of President and Civil Officers.** The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article III

JUDICIAL DEPARTMENT

Section 1. **Vesting of Power in Courts; Term and Compensation of Judges.** The judicial Power of the United States, shall be vested in one supreme* Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Sevices, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. **Jurisdiction in General of Courts.** The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of

* Notice the small *s. supreme* denotes the highest, or national, court; it never did mean *supreme over other branches of government.*

admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Appeals to Supreme Court, Subject to Such Exceptions and Regulations as Congress Shall Make. In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.*

Trial by Jury. The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. **Treason.** Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

No Attainder Except During Life. The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the life of the Person attainted.

Article IV

STATES' RELATIONS

Section 1. **"Full Faith and Credit Clause."** Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general

* It is important to know this; many do not realize it.

Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. **Citizens Everywhere Entitled to Privileges and Immunities.** The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Extradition. A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

Slaves (word not used) and Servants to Be Delivered up. No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section 3. **New States Admitted by Congress.** New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

Power of Congress Over Territory or Other Property. The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4. **Republican Form Guaranteed States; Domestic Violence.** The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article V

MODE OF AMENDMENT

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of it's equal Suffrage in the Senate.

Article VI

MISCELLANEOUS PROVISIONS

Assumption of Debts. All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

The "Supreme Law of the Land." This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

All Officers, Federal and State, Bound by Oath to Support Constitution. The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States,

shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article VII

RATIFICATION

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. In witness whereof We have hereunto subscribed our Names,

The Word, "the," being interlined between the seventh and eighth Lines of the first Page, The word "Thirty" being partly written on an Erazure in the fifteenth Line of the first Page, The Words "is tried" being interlined between the thirty second and thirty third Lines of the first Page and the Word "the" being interlined between the forty third and forty fourth Lines of the second Page.

Attest William Jackson Secretary

G°: Washington—Presd^{t}.
and deputy from Virginia

NAMES OF SIGNERS BY STATES

- **Delaware**
  - Geo: Read
  - Gunning Bedford jun
  - John Dickinson
  - Richard Bassett
  - Jaco: Broom
- **Maryland**
  - James McHenry
  - Dan of St. Thos. Jenifer
  - Danl Carroll
- **Virginia**
  - John Blair—
  - James Madison Jr
- **North Carolina**
  - Wm. Blount
  - Richd. Dobbs Spaight.
  - Hu Williamson
- **South Carolina**
  - J. Rutledge
  - Charles Cotesworth Pinckney
  - Charles Pinckney
  - Pierce Butler
- **Georgia**
  - William Few
  - Abr Baldwin
- **New Hampshire**
  - John Langdon
  - Nicholas Gilman
- **Massachusetts**
  - Nathaniel Gorham
  - Rufus King
- **Connecticut**
  - Wm. Saml. Johnson
  - Roger Sherman
- **New York . .** Alexander Hamilton
- **New Jersey**
  - Wil: Livingston
  - David Brearley.
  - Wm. Paterson
  - Jona: Dayton
- **Pennsylvania**
  - B Franklin
  - Thomas Mifflin
  - Robt Morris
  - Geo. Clymer
  - Thos. FitzSimons
  - Jared Ingersoll
  - James Wilson
  - Gouv Morris

BILL OF RIGHTS

Following Ten Amendments Adopted 1791

Amendment I

Freedom of Speech, Press, Religion. Right of Assembly and Petition

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II

Militia. Right to Bear Arms

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III

Quartering of Soldiers

No soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

Right Against Unreasonable Search and Seizure

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

Indictment, Jeopardy, no Witness Against Self, Due Process of Law

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

Right of Trial by Jury, Counsel

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VII

Common Law; Civil Jury

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive Bail; Unusual Punishment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

Rights Not Enumerated Retained by People

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

Powers Not Delegated Reserved to States or People

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

[End of Bill of Rights]

Amendment XI

Adopted 1795

No State Sued by Any Citizen Except With Own Consent

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment XII

Adopted 1804

Reform of Electoral Vote.* The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state

* Do not read unless you have plenty of time. It will bore you to death.

with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Amendment XIII

Adopted 1865

Section 1. **Abolition of Slavery.** Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Section 2. Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV *

Rights of Citizens

Adopted 1868

Section 1. **Persons Born in U.S. Are Citizens; Due Process of Law, Equal Protection of the Laws.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. **Representation Cut Down if Males not Allowed to Vote.†** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male

* This is the amendment that has been twisted backward by the Supreme Court. It has probably been the most important and least understood part of the Constitution. Every American should study its origin, development, the court decisions under it and the public concepts of it.

† So that if the South didn't let the Negroes vote, it could not count them even at 3-5, as formerly. Passage in 1870 of Amendment XV guaranteeing the vote to Negroes, made this Section obsolete.

inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. **To Punish Those Participating in Rebellion.** No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. **U.S. Civil War Debt Valid; Confederate Debt Invalid; Pensions.** The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV

The Right to Vote (Negro Suffrage)

Adopted 1870

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.——

Section 2. The Congress shall have power to enforce this article by appropriate legislation.——

Amendment XVI

Income Tax

Adopted 1913

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived,* without apportionment among the several States, and without regard to any census or enumeration.

Amendment XVII

Popular Election of Senators

Adopted 1913

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided,* That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

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*In spite of this Amendment, the Supreme Court has exempted the salaries of its own members, and has made numerous other exemptions. Recently the Court has been reversing itself; it is beginning to hold that Congress actually has the power the people gave it—to collect taxes "from whatever source derived."

Amendment XVIII

Prohibition

Adopted 1919

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

Amendment XIX

Woman Suffrage

Adopted 1920

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Amendment XX

Lame Duck Amendment*

Adopted 1933

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators

* So-called, because under the old system a "lame duck" (defeated member of Congress) held over and attended a "lame duck" session. Office is now taken January 20th by President and Vice-President; January 3rd by members of Congress.

and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

Section 6. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission.

Amendment XXI

Repeal of Prohibition

Adopted 1933

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

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